

1960

## c 110 Division Courts Act

Ontario

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## CHAPTER 110

**The Division Courts Act****1.—(1)** In this Act,Interpre-  
tation

- (a) “action” includes a proceeding, suit, matter and cause;
- (b) “county” includes a provisional county and a provisional judicial district;
- (c) “county court” includes district court;
- (d) “debt or money demand summons” means a summons instituting an action for the recovery of a debt or money demand;
- (e) “defendant” includes primary debtor;
- (f) “division” means the territory in and for which a division court is prescribed;
- (g) “Inspector” means the Inspector of Legal Offices;
- (h) “judge” means the judge or a junior judge of the county court of the county in which is situate the division for which a division court is prescribed;
- (i) “judgment creditor” includes a creditor who has obtained judgment against a garnishee;
- (j) “judgment debtor” includes a garnishee against whom judgment has been recovered;
- (k) “plaintiff” includes a primary creditor;
- (l) “prescribed form” means the form prescribed in the rules;
- (m) “rules” means the rules and regulations made under this Act. R.S.O. 1950, c. 106, s. 1 (1), *revised*.

(2) Where in this Act any power or authority is conferred or any duty is imposed upon the judge of a county court, it shall be exercised or performed by him and not by a junior judge. R.S.O. 1950, c. 106, s. 1 (2).

Exclusive  
powers of  
county judge

Territorial  
application  
of Part I;

**2.**—(1) Part I, except where otherwise therein provided, applies to every county and provisional judicial district.

Part II

(2) Part II is applicable only to provisional judicial districts. R.S.O. 1950, c. 106, s. 2.

## PART I

### APPLICABLE TO COUNTIES AND DISTRICTS

#### COURTS

Courts  
continued

**3.** Subject to this Act and the rules, the division courts existing at the time this Act takes effect shall continue. R.S.O. 1950, c. 106, s. 3.

Designation  
of court

**4.** The court in each division shall be called "The First (or as the case may be) Division Court of the County of .....". R.S.O. 1950, c. 106, s. 4 (1).

Each court  
to have  
a seal

**5.** Every division court shall have a seal, with which all process shall be sealed or stamped, and that shall be paid for out of the Consolidated Revenue Fund. R.S.O. 1950, c. 106, s. 5.

To be courts  
of record

**6.** Every division court is a court of record. R.S.O. 1950, c. 106, s. 6.

Courts in  
cities

**7.** In a city in which two division courts are prescribed, all or any of the sittings of both such courts may be held in either of such divisions, and the clerks of both courts may, with the approval of the Lieutenant Governor in Council, keep their offices in the same division. R.S.O. 1950, c. 106, s. 7, *revised*.

Accom-  
modation

**8.**—(1) The local municipality in which a division court is held shall provide a court room, not in or connected with an hotel, and other necessary accommodation for holding the court.

Where no  
proper court  
room, etc.

(2) If a proper court room and other necessary accommodation are not furnished by the local municipality, the judge may hold the court in any suitable place in the division or in any other division of the county in which suitable accommodation is provided, and the owner, lessee or tenant of the building

in which the court is held is entitled to receive from the local municipality whose duty it was to provide proper accommodation for the court the sum of \$10 or such larger amount not exceeding \$20 as the Inspector approves for every day on which the court is held in his building.

(3) Where a local municipality, not being a city or town, furnishes a court room and other necessary accommodation, or pays for the use of a building, the local municipality is entitled to recover from any other local municipality, the whole or part of which is within the division for which the court is held, such reasonable share of the cost as shall be ordered by the judge of the court to be paid and contributed by the last-mentioned municipality. R.S.O. 1950, c. 106, s. 8. Judge to apportion cost of court room

(4) The Municipality of Metropolitan Toronto shall be deemed to be a local municipality for the purpose of this section and no local municipality in The Municipality of Metropolitan Toronto is under a duty to provide court rooms and other accommodation under this section. 1957, c. 29, s. 1. Metropolitan Toronto

9. The sittings of a division court in a county town may be held in the court house. R.S.O. 1950, c. 106, s. 9. Use of court house

10. Actions and judgments in a division court, the number or limits of which are changed, continue to be actions and judgments therein, but the judge may transfer any such action or judgment to any other division court, and, when so transferred, it is an action or judgment of such other court. R.S.O. 1950, c. 106, s. 10. Change in number or limits of court

11. The clerk of the peace shall record in a book to be kept by him the divisions as prescribed from time to time, and the times and places of holding the division courts, and the alterations made therein, and he shall transmit to the Inspector a copy of the record. R.S.O. 1950, c. 106, s. 11, *revised*. Clerks of the peace to record time and place for holding courts

#### JUDGES

12. Every division court shall be presided over by a judge. R.S.O. 1950, c. 106, s. 12. Who to preside

13.—(1) The judge may appoint a barrister to act as his deputy, and the barrister so appointed has all the powers and privileges vested in and is subject to all the duties imposed by law upon the judge. In case of illness or absence of judge

(2) The judge shall forthwith send to the Provincial Secretary notice of the appointment, specifying the name and Provincial Secretary to be notified

residence of the barrister so appointed and the reason for his appointment.

**Duration**

(3) No such appointment shall be continued for more than two months, and, in case the Lieutenant Governor in Council disapproves of the appointment, he may annul it. R.S.O. 1950, c. 106, s. 13.

**Adjournment of court if judges does not arrive**

**14.** If the judge does not open court on the day appointed for that purpose, the clerk shall, after 4 o'clock in the afternoon, adjourn the court to an hour on the following day, to be named by him, and so from day to day, adjourning over any Sunday or holiday, until the judge arrives to open court, or until other directions are received from him. R.S.O. 1950, c. 106, s. 14.

**Judge to supervise**

**15.—(1)** It is the duty of the judge to see that the officers of his courts perform their duties and to examine into complaints against them.

**Suspensions**

(2) The judge may suspend a clerk or bailiff for any cause and, in the case of suspension, shall forthwith report it and the reason therefor to the Inspector, and, if a vacancy occurs in the office of clerk or bailiff, the judge shall forthwith notify the Inspector. R.S.O. 1950, c. 106, s. 15.

**Action by or against judge**

**16.** An action by or against a judge may be brought in any division court of a county adjoining that in which he resides. R.S.O. 1950, c. 106, s. 16.

**Power to amend proceedings**

**17.** The judge may at any time, and on such terms as to costs and otherwise as to him seem just, amend any defect or error in any proceeding, and all such amendments may be made as are necessary for the advancement of justice, determining the real question raised by or depending on the proceedings and best calculated to secure the giving of judgment according to the very right and justice of the case. R.S.O. 1950, c. 106, s. 17.

**CLERKS AND BAILIFFS****Every court to have clerk and bailiff**

**18.** There shall be a clerk and one or more bailiffs for every division court, who shall be appointed by the Lieutenant Governor and hold office during pleasure. R.S.O. 1950, c. 106, s. 18.

**Office hours**

**19.** Except on Saturdays and holidays when they shall be closed, every division court office shall be kept open from 9.30 a.m. until 4.30 p.m. 1952, c. 23, s. 1.

**20.**—(1) The clerk shall issue all summonses and shall make copies thereof with the notices thereon, according to the prescribed form, and, except as otherwise provided by this Act, shall deliver the same to the bailiff for service. R.S.O. 1950, c. 106, s. 19.

Clerk to  
issue  
summonses,  
etc.

(2) The clerk shall cause a note of all summonses, notices, orders, judgments, warrants, executions and returns thereto to be entered in a book to be kept in his office, and shall sign his name on every page of the book, and the signed entries, or a copy thereof certified as a true copy by the clerk, are sufficient evidence of such entries and of the proceedings referred to therein without further proof. R.S.O. 1950, c. 106, s. 20.

Clerk to  
keep a  
record of  
process

**21.**—(1) A procedure book and a foreign procedure book shall be kept by the clerk.

Books to  
be kept  
by clerks

(2) The cost of all books and forms required by this Act to be kept by the clerk and bailiff and of necessary stationery and stationery supplies shall be repaid to him by the treasurer of the county upon the certificate of the Inspector. R.S.O. 1950, c. 106, s. 21.

Cost of  
division  
court books,  
forms, etc.

(3) Notwithstanding subsection 2, the cost of the books, forms, stationery and stationery supplies with respect to the division courts having jurisdiction in The Municipality of Metropolitan Toronto shall be repaid to the respective clerks by the treasurer of the metropolitan municipality upon the certificate of the Inspector. 1954, c. 24, s. 1.

Special  
provision re  
Metropolitan  
Toronto

**22.** The clerk, when required, shall forward the summons and copies for service to the clerk of any other court who shall receive and deliver them to the bailiff for service, and when returned shall send the summons to the clerk from whom it was received, and shall enter the proceedings in the foreign procedure book. R.S.O. 1950, c. 106, s. 22.

Forwarding  
summonses  
for service  
in other  
divisions

**23.** The clerk shall prepare an affidavit of service of every summons issued out of his court, or sent to him for service, stating how it was served, the day of service and the distance the bailiff necessarily travelled to effect service, and the affidavit shall be annexed to or endorsed on the summons and shall be sworn to by the bailiff, but the judge may require the bailiff to be sworn in his presence and to answer such questions as are put to him touching any service or mileage. R.S.O. 1950, c. 106, s. 23.

Clerk to  
prepare  
affidavits of  
service, etc.

Clerks to  
issue  
executions,  
tax costs  
and keep  
account of  
fines, etc.

**24.** The clerk shall issue all warrants and executions, and shall tax costs, subject to revision by the judge, and shall keep an account of all fines payable or paid into court, and of all suitors' money paid into and out of court, and shall enter an account of all such fines and money in a book to be kept by him for that purpose, which shall be open to all persons desirous of searching it, and it shall at all times be accessible to the judge and the Inspector. R.S.O. 1950, c. 106, s. 24.

Fines and  
penalties  
to be paid  
to clerk  
of peace

**25.** The money arising from any penalty, forfeiture or fine imposed by or under this Act, not directed to be otherwise applied, shall be paid to the clerk and shall be paid by him to the clerk of the peace, to be paid over to the Treasurer of Ontario. R.S.O. 1950, c. 106, s. 25.

Clerks to  
deliver to  
clerk of  
peace a  
verified  
account of  
fines,

**26.** The clerk shall, at least once in every three months or oftener if required by the clerk of the peace, deliver to him a full account in writing verified by affidavit of all fines levied, accounting for and deducting the reasonable expenses of levying them and any allowance that the judge may make out of such fines in pursuance of the power hereinafter given. R.S.O. 1950, c. 106, s. 26.

and furnish  
judge with  
a verified  
account of  
moneys paid  
in and out  
of court

**27.** The clerk, when required by the judge, shall furnish him with a full account in writing, verified by affidavit, of the money paid into or out of the court under orders, judgments or process of the court, and of the balance in court belonging to suitors or others. R.S.O. 1950, c. 106, s. 27.

Clerk to  
remit  
moneys

**28.** The clerk shall promptly remit all moneys received by him in payment of a judgment to the person entitled thereto and shall in no case retain any such moneys for a period of more than three months. R.S.O. 1950, c. 106, s. 20.

Clerk  
annually  
to make list  
of suitors'  
money in  
court for  
six years

**29.—(1)** The clerk shall annually, in the month of January, make out a correct statement of all sums of money belonging to suitors or others that have been paid into court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the persons for whom or on whose account such sums were so paid.

Posting and  
distributing  
list

**(2)** The clerk shall keep one copy of the statement posted up in his office and another copy in some conspicuous part of the court house or the place where the court is held, and copies shall also be sent to the Treasurer of Ontario and the Inspector.

Disposition  
of un-  
claimed  
moneys

**(3)** All such sums shall form part of the Consolidated Revenue Fund and shall be forthwith paid over by the clerk or officer holding them to the Treasurer of Ontario, and, except

by leave of the Lieutenant Governor in Council, no person is entitled to claim any such sum that has remained unclaimed for six years.

(4) The time during which the person entitled to claim any such sum was an infant, or of unsound mind, or out of Ontario, shall not be taken into account in computing the six years. Claims of persons under disability  
R.S.O. 1950, c. 106, s. 29.

**30.** The bailiff shall promptly serve and execute all summonses, orders, warrants and executions delivered to him by the clerk, and shall so soon as served or executed return them to the clerk, but, subject to section 64, he shall not be required to travel beyond the limits of his division, or be allowed to charge mileage for any distance beyond the limits of the county in which is situated the division for the court of which he is bailiff. Bailiffs to serve process  
R.S.O. 1950, c. 106, s. 30.

**31.—**(1) Where the gross fees and emoluments earned by a clerk or bailiff are less than \$1,000 a year, the local municipality in which the division court is held shall pay to the clerk and bailiff respectively the sum of \$4 for attending each sitting of the court. Fees for sittings

(2) Where under subsection 1 in any division the clerk and bailiff are paid for attending court sittings by the local municipality in which the court is held, such local municipality is entitled to recover from any other municipality for which the court is held such reasonable share of the amount so paid to the clerk and bailiff as is ordered by the judge. Apportionment  
R.S.O. 1950, c. 106, s. 31.

**32.—**(1) The fees upon every proceeding shall be paid in the first instance, and before it is taken, by the party on whose behalf it is taken. By whom fees to be paid in first instance

(2) If the fees are not so paid, payment may, by summary order of the judge, be enforced by execution in like manner as a judgment of the court. How enforced  
R.S.O. 1950, c. 106, s. 32.

**33.** At the time of the issue of any process or execution the bailiff's fees thereon shall be paid to the clerk and shall be paid over to the bailiff upon the return of the execution and not before, but, if the bailiff does not become entitled to any part or becomes entitled to a part only of such fees, the whole or the surplus, as the case may be, shall be repaid by the clerk to the person from whom the fees were received. Bailiff's fees to be paid to clerk when execution issues  
R.S.O. 1950, c. 106, s. 33.



Bailiff  
to forfeit  
fees if he  
neglects  
to return  
process

**34.** If the bailiff neglects to return any process or execution within the time required by law, he shall for such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk who shall keep a special account thereof and account for and pay over the fees to the clerk of the peace, to be paid to the Treasurer of Ontario, to form part of the Consolidated Revenue Fund. R.S.O. 1950, c. 106, s. 34.

Clerk or  
bailiff not  
to accept  
extra fees

**35.** A clerk or bailiff shall not, directly or indirectly, take or receive any commission, charge, fee or reward for or in connection with the collection of any debt or claim that has been or may or can be sued in the court for which he is clerk or bailiff, except such fees as are provided by a tariff of fees under this Act. R.S.O. 1950, c. 106, s. 35.

Books, etc.,  
to be pro-  
duced for  
inspection

**36.** Every clerk and bailiff shall, as often as required by the Inspector, produce at the clerk's office, for examination and inspection, all books and documents required to be kept by him, and shall report to the Inspector concerning such matters as the Inspector requires. R.S.O. 1950, c. 106, s. 36.

Clerks' and  
bailiffs'  
returns to  
Inspector

**37.** Every clerk and bailiff shall keep a separate book in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, and, on or before the 31st day of January in every year, shall make a return under oath to the Inspector showing the aggregate amount of fees, charges and emoluments that he became entitled to receive during the year that ended on the 31st day of December next preceding. R.S.O. 1950, c. 106, s. 37.

Clerk to  
make  
returns to  
Lieutenant  
Governor

**38.** Every clerk, on or before the 31st day of January in each year, shall make a return, in such form and manner as the Lieutenant Governor in Council prescribes, of the business of his office for the year that ended on the 31st day of December next preceding. R.S.O. 1950, c. 106, s. 38.

Annual  
return of  
commitment  
of judgment  
debtors

**39.** Every clerk, on or before the 31st day of January in each year, shall make to the Inspector a return showing the number of judgment debtors who, during the twelve months ending the 31st day of December next preceding, were ordered to be committed under each of the heads mentioned in section 132. R.S.O. 1950, c. 106, s. 39.

Security  
by clerks  
and bailiffs

**40.—(1)** Every clerk and bailiff shall furnish such security as is required by the Lieutenant Governor in Council for the due performance of the duties of his office, and, subject to the rules, the provisions of *The Public Officers Act* relating to the giving of security apply to such security.

R.S.O. 1960,  
c. 326

(2) The security shall enure to the benefit of any person suffering damage by the default, breach of duty or misconduct of the clerk or bailiff. R.S.O. 1950, c. 106, s. 40.

Security to enure to benefit of person injured

**41.**—(1) In an action against a surety of a clerk or bailiff, the entries in the books kept by such clerk or bailiff are *prima facie* evidence against the surety.

Entries of clerk or bailiff evidence against surety

(2) For the purpose of this section, the words "clerk or bailiff" include a person who has ceased to be a clerk or a bailiff, as the case may be. R.S.O. 1950, c. 106, s. 41.

Interpretation of "clerk or bailiff"

**42.** A clerk shall not practise as a barrister or solicitor. R.S.O. 1950, c. 106, s. 42.

Clerk not to practise as barrister, etc.

**43.**—(1) A clerk or bailiff shall not sue or be sued in the court of which he is clerk or bailiff.

Actions by and against clerks and bailiffs

(2) A clerk or bailiff shall sue or be sued separately or jointly with another person in the court of any next adjoining division whether in the same or another county.

Idem

(3) Nothing in this section prevents proceedings from being continued in the court in which the action was brought, if they were commenced before the appointment of such clerk or bailiff. R.S.O. 1950, c. 106, s. 43.

Commenced before appointment

**44.** A clerk, bailiff or other officer of the court shall not, directly or indirectly, purchase any property at a sale made by a bailiff under legal process, and every such purchase is void. R.S.O. 1950, c. 106, s. 44.

Bailiff and other officers not to purchase goods seized

**45.** If a clerk, bailiff or other officer of a division court is guilty of extortion, he is, upon proof thereof before the court, forever disqualified from holding any office of profit or emolument in a division court, and is also liable in damages to the party aggrieved. R.S.O. 1950, c. 106, s. 45.

Extortion

**46.**—(1) Upon a complaint in writing that a bailiff or officer, acting under colour or pretence of process of his court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the judge may, at a sittings of the court, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary persons, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money levied or received, and for the payment of such damages and costs to the person aggrieved, as he thinks just.

Misconduct of court officers

Enforcing  
order for  
payment  
by bailiff

(2) In default of payment of the money ordered to be paid by the bailiff or officer within the time mentioned in the order for the payment thereof, the judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of the distress and sale, and in default of such distress or summarily in the first instance, or where payment is not made forthwith, if so ordered, may commit the offender to the jail of the county for a period not exceeding three months, unless the money and costs are sooner paid. R.S.O. 1950, c. 106, s. 46.

Bailiff  
neglecting  
duty in  
relation to  
execution

47. If a bailiff, by neglect, connivance or omission, loses the opportunity of levying an execution or taking property under an attachment, or unduly delays to levy or attach, the judge, upon complaint of the party aggrieved, and upon proof of the fact alleged, may order the bailiff to pay such damages as the party aggrieved appears to have sustained, not exceeding the sum for which the execution or attachment issued, and upon demand being made therefor, and on his refusal to satisfy the damages, payment may be enforced by such means as are provided for enforcing judgments. R.S.O. 1950, c. 106, s. 47.

Resignation,  
removal or  
death of  
clerk

48. All accounts, moneys, books, papers, documents and other things in the possession of a clerk or bailiff, by virtue of or appertaining to his office, shall, upon his death, resignation or removal, immediately become the property of the clerk of the peace, who shall hold them until the appointment of another clerk or bailiff to whom he shall deliver them when security has been furnished on behalf of such clerk or bailiff. R.S.O. 1950, c. 106, s. 48.

Leave of  
absence

49. Leave of absence for a period not exceeding two months may be granted by the Inspector to a clerk or bailiff. R.S.O. 1950, c. 106, s. 49.

Clerk of  
peace to  
act as  
clerk when  
office of  
clerk is  
vacant

50. Subject to section 51, upon the death, resignation, suspension or removal of the clerk, the clerk of the peace shall be the clerk until a successor is appointed or the suspension is removed, and the clerk of the peace shall be paid by the county for his services in taking over the office the sum of \$5 together with actual disbursements. R.S.O. 1950, c. 106, s. 50.

Deputy  
during  
absence of  
clerk or  
bailiff

51.—(1) With the approval of the Inspector, when prevented from acting because of absence or illness or any cause other than suspension, the clerk or bailiff may appoint a deputy to act for him, and the clerk or bailiff, as the case may

be, is jointly and severally responsible for all the acts and omissions of the deputy so appointed.

(2) With the approval of the Inspector, where there is no clerk or bailiff or the clerk or bailiff is under suspension, the judge may appoint a clerk or bailiff, as the case may be, *pro tempore*. Appointment of clerk, bailiff *pro tempore*

(3) Where an appointment is made under subsection 1 or 2, the person so appointed has, during the period of his appointment, all the powers and privileges and is subject to the duties of the clerk or bailiff, as the case may be. Powers, privileges, duties

(4) Where there is no bailiff or the bailiff is for any reason unable to act, the clerk may act in his place. R.S.O. 1950, c. 106, s. 51. Clerk acting as bailiff

**52.**—(1) In the event of the death, resignation, suspension or removal of a bailiff, after action taken by him under an execution or attachment, the proceedings may be continued by his successor. Continuation of proceedings

(2) The benefit of all securities given to the bailiff enures to his successor in office. R.S.O. 1950, c. 106, s. 52. Securities given to the bailiff

#### JURISDICTION AS TO CAUSES OF ACTION AND QUANTUM

**53.** A division court does not have jurisdiction in,

- Cases in which court has no jurisdiction
- (a) an action for the recovery of land, or an action in which the right or title to a corporeal or incorporeal hereditament, or any toll, custom or franchise, comes in question;
  - (b) an action in which the validity of a devise, bequest or limitation under a will or settlement is disputed;
  - (c) an action for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage;
  - (d) an action against a justice of the peace for anything done by him in the execution of his office, if he objects thereto;
  - (e) an action upon a judgment or order of the Supreme Court or a county court where execution may issue upon or in respect thereof. R.S.O. 1950, c. 106, s. 53.

Cases in  
which  
court has  
jurisdiction

**54.**—(1) Except as otherwise provided in this Act, a division court has jurisdiction in,

- (a) a personal action where the amount claimed does not exceed \$200;
- (b) a personal action where all the parties thereto consent in writing and the amount claimed does not exceed \$400;
- (c) an action on a claim or demand of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$200, provided that, in the case of an unsettled account, the whole account does not exceed \$1,000;
- (d) an action for the recovery of a debt or money demand, where the amount claimed, exclusive of interest, whether the interest is payable by contract or as damages, does not exceed \$400 and the amount claimed is,
  - (i) ascertained by the signature of the defendant or of the person whom as executor or administrator he represents, or
  - (ii) the balance of an amount not exceeding \$400 which amount is so ascertained, or
  - (iii) the balance of an amount so ascertained that did not exceed \$800, and the plaintiff abandons the excess over \$400,

but an amount shall not be deemed to be so ascertained if it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it, and the jurisdiction conferred by this clause applies to claims and proceedings against an absconding debtor;

- (e) an action or contestation for the determination of the right of a creditor to rank upon an insolvent estate where the claim of the creditor does not exceed \$200.

Combining  
causes of  
action

(2) Claims combining causes of action may be joined in one action where,

- (a) the amount of the claim in respect of each cause of action does not exceed the limit prescribed by subsection 1 for such cause of action; and

(b) the total amount of the combined claims does not exceed \$400.

(3) The findings of the court upon claims so joined shall be separate. Separate findings on combined claims

(4) Where the value of property distrained, taken or detained does not exceed \$200 and the title to the land is not brought into question, an action of replevin may be brought in the court for the division in which the defendant or one of the defendants resides or carries on business or where the property was distrained, taken or detained, and *The Replevin Act* applies *mutatis mutandis* to such action. Replevin R.S.O. 1960, c. 352

(5) A division court also has jurisdiction in actions between teachers and school boards as provided by *The Schools Administration Act*. R.S.O. 1950, c. 106, s. 54. Actions between teachers and school boards R.S.O. 1960, c. 361

**55.** Except in actions in which a jury is demanded as hereinafter provided, the judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment as appears to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as herein otherwise provided. R.S.O. 1950, c. 106, s. 55. Summary hearings

**56.** Upon a contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the judge may give judgment for the amount in money as if the contract had been so expressed, if the goods and commodities have not been delivered or the labour or other thing performed in accordance with the contract. R.S.O. 1950, c. 106, s. 56. Judge may order payment in money, although contract not for payment in money

**57.**—(1) A division court in actions otherwise within its jurisdiction has power to grant relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the Supreme Court. Powers of court

(2) Nothing in this section confers jurisdiction to grant an injunction. R.S.O. 1950, c. 106, s. 57. No injunctions

**58.** A minor may sue for any sum not exceeding \$100 due to him for wages, or for work or services, as if he were of full age. R.S.O. 1950, c. 106, s. 58. Minors may sue for wages

Causes of  
action not  
to be  
divided

**59.** A cause of action shall not be divided into two or more actions for the purpose of bringing it within the jurisdiction of a division court. R.S.O. 1950, c. 106, s. 59.

Judgment  
to be full  
discharge

**60.** A judgment in an action brought for the balance of an account, or for a part of a claim, where the residue is abandoned to bring the claim within the jurisdiction of a division court, is a full discharge of all demands in respect of the account for the balance of which such action was brought or for the whole claim, as the case may be. R.S.O. 1950, c. 106, s. 60.

Transfer of  
actions to  
Supreme  
Court

**61.**—(1) Where it appears at any stage of an action otherwise of the proper competence of a division court that the court has not cognizance thereof on account of the title to land or a corporeal or incorporeal hereditament, or a toll, custom or franchise being in question, or the validity of a devise, bequest or limitation under a will or settlement being disputed, or the amount involved being in excess of the jurisdiction of the court, the action shall not on that account be dismissed, but a judge of the Supreme Court, or the judge of the court in which the action is pending, may order the action to be transferred to the Supreme Court or to a county court where the county court would have jurisdiction, upon such terms as to the payment of costs or otherwise as he thinks fit, and thereafter the action shall proceed in the Supreme Court or the county court as if originally commenced therein and as if the defendant had entered an appearance, but the judge may give such directions as to procedure as are deemed proper.

Appeal  
from  
order

(2) Where the order is made by a judge of a division court, an appeal lies therefrom to a judge of the Supreme Court in chambers who may rescind the order or vary the terms thereof. R.S.O. 1950, c. 106, s. 61.

Action may  
be removed  
into  
Supreme  
Court

**62.** If it appears to a judge of the Supreme Court that an action is a fit one to be tried in the Supreme Court, he may order that it be transferred to the Supreme Court upon such terms as to payment of costs or otherwise as he thinks fit. R.S.O. 1950, c. 106, s. 62.

Counter-  
claim  
involving  
matters  
beyond  
jurisdiction

**63.**—(1) Where a counterclaim is disputed and involves matters beyond the jurisdiction of the division court, the judge may try the claim and may, if he sees fit, stay the issue of execution upon the judgment until the counterclaim has been disposed of, upon such terms as to security and otherwise as he sees fit to impose.

(2) If the counterclaim or any part thereof is admitted, the judge may direct the amount admitted to be set off *pro tanto* without prejudice to any proceedings to recover the balance. R.S.O. 1950, c. 106, s. 63. Set-off of counter-claim when admitted

#### TERRITORIAL JURISDICTION AND PLACE OF TRIAL

**64.**—(1) An action in a division court shall be entered and tried, In what court actions to be entered and tried

- (a) in the court for the division in which the cause of action arose; or
- (b) in the court for the division in which the defendant or any one of several defendants resides or carries on business; or
- (c) in the court whose place of sitting is nearest to the residence of the defendant or any one of several defendants.

(2) In addition to the courts mentioned in subsection 1, an action of a woodsman for wages may be entered and tried in the court for the division in which his contract for hire was made, regardless of any stipulation in the contract or elsewhere to the contrary, and, in this subsection, “woodsman” means a person performing labour or services in connection with logs or timber, and includes a cook, blacksmith and every type of artisan usually employed in connection with logging or timbering operations. Woodsman's wages

(3) In any case under clause c of subsection 1 or subsection 2, a summons may be served by a bailiff of the court out of which it issues, and upon judgment being recovered execution against the goods and chattels of the debtor and all other process and proceedings to enforce payment of the judgment may be issued to the bailiff of such court and be executed and enforced by him in the county in which the debtor resides as well as in the county in which the judgment was recovered. 1957, c. 29, s. 2. Service of process in certain cases

**65.** If a person desires to bring an action in the court of a division other than as in section 64 mentioned, the judge may by order authorize an action to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of the defendants resides, whether such defendant resides in the county of the judge granting the order or in an adjoining county. R.S.O. 1950, c. 106, s. 65. When actions may be brought in other than the regular divisions



Effect of  
agreement  
as to place  
of trial

**66.** No proviso, condition, stipulation, agreement or statement that provides for the place of trial of an action, matter or proceeding is of any force or effect where the defendant, within the time limited for disputing the plaintiff's claim or within such further time as the judge allows, files with the clerk of the court in which the action was commenced a notice disputing the jurisdiction of the court and an affidavit of the defendant or his agent stating that in his belief there is a good defence to the action on the merits, the division wherein the cause of action arose, or partly arose, and the division where the defendant resides. R.S.O. 1950, c. 106, s. 66.

Actions when  
defendant  
resides out  
of Ontario

**67.**—(1) Where a claim is within the proper competence of a division court, the action may be brought notwithstanding that the residence of the defendant is, at the time of bringing the action, out of Ontario, and the action may be brought in the court of the division in which the cause of action arose or partly arose, but the court may refuse to allow the action to proceed if it appears that the action is one that ought to be tried elsewhere.

Service of  
summons  
on non-  
residents

(2) The service of the summons may be made by a bailiff of the court out of which it issued or by any person who is, either before or after the service, approved by the judge or by the clerk, but the summons shall be served at least fifteen days before the return day thereof.

Allowance  
for service  
out of  
Ontario

(3) Where service of the summons has been effected out of Ontario, the judge may allow, as costs in the action, a sum towards the expenses incurred in effecting service, not exceeding in the whole \$5. R.S.O. 1950, c. 106, s. 67.

Where  
defendant a  
corporation  
with head  
office out  
of Ontario

**68.** Where the defendant is a corporation not having its head office in Ontario and the cause of action arose partly in one division and partly in another, the plaintiff may bring his action in either division. R.S.O. 1950, c. 106, s. 68.

Place of  
trial where  
amount sued  
for exceeds  
\$100

**69.**—(1) Where the debt or money payable exceeds \$100 and is made payable by the contract of the parties at a place named therein, the action may be brought thereon in the court of the division in which the place of payment is situate, subject to the action being transferred to the court of any division in which but for this section it might have been brought.

Changing  
place of  
trial in  
such cases

(2) The judge of the division court in which the action is brought may, upon application of the defendant made within the time limited for disputing the plaintiff's claim, make an order transferring the action accordingly.

(3) The application shall be supported by an affidavit of the applicant or his agent stating that the applicant intends to defend the action, that there is a good defence upon the merits, that the cause of action did not wholly arise in the division in which the action is brought, that the witnesses for the defence, or some of them, reside in the division in which the defendants, or one of them, resided or carried on business at the time the action was brought, and that the application is not made for the purpose of delay, and the dates of the next two sittings of the court to which it is sought to have the action transferred shall also be shown. Affidavit in support of application

(4) The order shall direct at what sittings of the court the action is to be tried, subject to all rights of postponement as in other cases, and shall be attached by the clerk to the summons and other proceedings in the action, and he shall forthwith transmit them to the clerk of the court to which the action is transferred, and enter a minute thereof in his procedure book. Order and papers to be transmitted to clerk

(5) Upon receipt of the order and other papers by the clerk of such last-mentioned court, he shall enter the action and proceedings in his procedure book. To be entered in procedure book

(6) All the papers and proceedings in the action thereafter shall be entitled and carried on as though the action had originally been entered in the last-mentioned court. Style

(7) The defendant shall forthwith serve a copy of the order upon the plaintiff or his agent. R.S.O. 1950, c. 106, s. 69. Service of order

**70.**—(1) If it appears that an action should have been entered in some other court of the same or some other county, it shall not fail for want of jurisdiction, but, on such terms as the judge orders all the papers and proceedings in the action may be transferred to any court having jurisdiction in the premises, and shall become proceedings thereof as if the action had been entered therein, and shall be continued as if it had originally been entered in the last-mentioned court. When action entered in wrong court

(2) The clerk of the court to which the proceedings have been transferred shall place the action on the list for trial at the next sittings of his court that commence six clear days or more after he receives the papers, and he shall forthwith after receiving the papers notify the parties or their agents by registered mail of the date, hour and place of the sittings, and the clerk issuing the summons shall certify in detail to the court to which the action is transferred all the costs incurred up to the date of the transfer. R.S.O. 1950, c. 106, s. 70. Clerk to place on list and notify parties

## PROCEDURE BEFORE TRIAL

## Entry of claim

**71.**—(1) The plaintiff shall enter his claim with the clerk and shall at the time of the entry leave with the clerk a copy of the claim for each defendant.

## Particulars

(2) The claim shall set out the particulars thereof with reasonable certainty and detail.

## Summons

(3) Each claim shall be numbered by the clerk according to the order in which it is entered, and a summons shall be issued by the clerk, bearing the number of the claim on the margin thereof. R.S.O. 1950, c. 106, s. 71.

## Promissory note, etc., to be filed

**72.** In an action on a promissory note, bill of exchange or cheque, the note, bill or cheque shall be filed with the clerk before judgment, unless otherwise ordered or unless it be shown that the note, bill or cheque is lost or that it cannot for some other reason be produced. R.S.O. 1950, c. 106, s. 72.

## What to accompany summons

**73.** The clerk shall annex the plaintiff's claim to the summons and shall deliver copies of the summons and claim to the proper person to serve it. R.S.O. 1950, c. 106, s. 73.

## Method of service of claim

**74.** Where the amount of the claim is \$60 or more, the service shall be personal and, where the amount is less than \$60, the service shall be on the defendant, his wife or servant, or on a grown-up person in the defendant's usual place of residence or business. 1957, c. 29, s. 3.

## Substitutional service

**75.** The judge may make an order for substitutional service or for service by advertisement or otherwise. R.S.O. 1950, c. 106, s. 75.

## Service on corporations

**76.**—(1) Every summons or process, whether before or after trial, against a corporation, firm or individual whose chief place of business is not in the division in which the summons or process is issued, and all subsequent papers and proceedings in the action, may be served on the agent of the corporation, firm or individual whose officer or place of business as such agent is either in the division from the court of which the summons or process issued, or is nearest thereto.

## Interpretation

(2) For the purpose of this section, "agent" includes,

- (a) in the case of a railway company, a station-master having charge of a station of the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office of the company;

- (c) in the case of an express company, a person having charge of an express office of the company;
- (d) in the case of any other corporation, firm or individual, a manager or other principal officer in charge of the office or place of business. R.S.O. 1950, c. 106, s. 76.

**77.** Where a party to an action intends to dispute the claim made against him, he shall leave with the clerk within ten days of the service upon him of the summons or other process constituting a notice of the claim a notice of dispute setting out his reasons for disputing the claim together with sufficient copies thereof, and the clerk shall forthwith send a copy thereof to each of the plaintiffs or other parties to the action. R.S.O. 1950, c. 106, s. 77. Notice of dispute

**78.** Subject to subsection 5 of section 88, where a party to an action intends to contest the territorial jurisdiction of the court, he shall include in his notice of dispute a statement that he disputes the jurisdiction of the court, and in default of such notice the jurisdiction shall be considered as established and determined and all proceedings may thereafter be taken as fully and effectually as if the action had been properly entered or taken in such court. R.S.O. 1950, c. 106, s. 78; 1957, c. 29, s. 4. Dispute as to territorial jurisdiction

**79.** At any time before judgment is entered, although the time for giving the notice disputing the plaintiff's claim has expired, the judge, on sufficient grounds shown and on such terms as to him seem just, may give leave to the defendant to dispute the plaintiff's claim, in which case the notice disputing the claim shall immediately be left with the clerk and also delivered to the plaintiff or sent to him by registered mail. R.S.O. 1950, c. 106, s. 79. Leave to dispute claim before judgment

**80.** A defendant who has filed a notice disputing the claim may, by notice to the clerk at least six days before the sittings at which the action may be tried, consent that judgment be entered against him for any amount, and the clerk shall immediately notify the plaintiff thereof by registered mail, and thereupon the plaintiff is entitled to have judgment entered by the clerk as by default for such amount and the costs necessarily incurred. R.S.O. 1950, c. 106, s. 80. Withdrawal of defence

**81.—(1)** Where the defendant desires to avail himself of the laws of set-off, or of *The Limitations Act*, or of a defence under any other statute, he shall give notice thereof to the plaintiff. Notice of set-off or other statutory defence  
R.S.O. 1960, c. 214

Evidence  
of set-off

(2) Except by leave of the judge, no evidence of set-off shall be given by the defendant except such as is contained in the particulars delivered.

Where  
set-off  
exceeds  
amount  
due to  
plaintiff

(3) If the set-off proved exceeds the amount found to be due to the plaintiff, judgment shall be entered for the defendant for the excess, if the excess is an amount within the jurisdiction of the court, but, if the excess is an amount beyond the jurisdiction of the court, the judge may order that an amount of the set-off equal to the amount found to be due to the plaintiff be satisfied by the claim, but the adjudication is not a bar to the recovery by the defendant in a subsequent action for the residue of the set-off. R.S.O. 1950, c. 106, s. 81.

Plea of  
tender with  
payment of  
money  
into court

**82.**—(1) If the defendant desires to plead a tender before action of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his notice of dispute and at the same time paying into court the amount mentioned in the notice, and notice of the dispute and payment shall be forthwith sent by the clerk to the plaintiff by registered mail or delivered at his usual place of residence or business.

Notice by  
plaintiff

(2) The plaintiff shall be deemed to have accepted the money in full satisfaction of his claim, and all proceedings in the action shall be stayed unless within five days after the receipt of notice of the payment he signifies in writing to the clerk his intention to proceed for his claim notwithstanding such defence, in which case the action shall proceed.

If  
plaintiff  
does not  
give notice

(3) If the plaintiff does not give the notice mentioned in subsection 2, the money shall be paid to him less \$1 to be paid over to the defendant for his trouble.

Giving of  
notice  
after time  
limited

(4) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the five days on such terms as to him seem just.

Rule as to  
costs where  
plaintiff  
proceeds  
for balance

(5) If after tender and payment into court the plaintiff proceeds with the action and does not recover more than the sum paid into court, he shall pay the defendant his costs, charges and expenses, and the amount thereof may be paid to the defendant out of the money so paid in, or may be recovered from the plaintiff in the same manner as money payable under a judgment, but, if the plaintiff recovers more than the sum paid into court, the full amount paid into court shall be applied towards the satisfaction of his claim, and judgment may be given against the defendant for the residue and costs of the action. R.S.O. 1950, c. 106, s. 82.

**83.**—(1) The defendant may, within the time limited for filing his notice of dispute, pay into court a sum in full satisfaction of the plaintiff's claim, together with the plaintiff's costs up to the time of such payment. Defendant may pay money into court

(2) The clerk shall forthwith deliver or send notice of such payment by registered mail to the plaintiff, and the sum so paid shall be paid to the plaintiff, and he shall be deemed to have accepted it in full satisfaction of his claim, and all proceedings in the action shall be stayed, unless within five days after the receipt of the notice the plaintiff gives notice to the clerk of his intention to proceed for the remainder of his claim, in which case the action shall proceed. Clerk to give notice of payment to plaintiff

(3) The judge may allow the plaintiff to give the notice to the clerk after the expiration of the five days on such terms as to him seem just. Notice may be given after five days

(4) If the plaintiff recovers no more than the sum paid into court, he shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, to be taxed and recovered by the same means as any other sum ordered by the court to be paid. R.S.O. 1950, c. 106, s. 83. Plaintiff to pay defendant's costs if no further sum recovered

**84.**—(1) A clerk or bailiff may take a confession or acknowledgment of debt from a defendant in the prescribed form, which shall be witnessed by the clerk or bailiff at the time of the taking thereof, and, upon the production of the confession or acknowledgment to the judge and proof thereof by the oath of the clerk or bailiff, the judge may order that judgment be entered thereon. Clerks and bailiffs may take confessions

(2) The oath shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant or any other person except his lawful fees for taking the confession or acknowledgment and that he has no interest in the demand sought to be recovered. Oath of clerk or bailiff

(3) Either party may apply to a judge for judgment to be signed on consent. R.S.O. 1950, c. 106, s. 84. Judgment on consent

**85.**—(1) The judge at any stage of the proceedings upon such terms as appear to him to be just may order that the name of the plaintiff, defendant, or garnishee improperly joined be struck out and that a person who ought to have been joined or whose presence is necessary in order to enable him effectually and completely to adjudicate upon the questions involved in the action be added as plaintiff, defendant or garnishee. Striking out and adding parties

Substituting  
or adding  
plaintiff

(2) Where an action has been commenced in the name of the wrong person as plaintiff or where it is doubtful whether it has been commenced in the name of the right plaintiff, the judge, if satisfied that it has been so commenced through a *bona fide* mistake and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as he deems just.

Consent of  
party added  
required

(3) No person shall be added or substituted as a plaintiff or as a next friend unless his consent in writing thereto is filed.

Service on  
parties  
added

(4) A person who is added as a defendant or garnishee shall be served with a copy of the summons, the original summons being first amended, and the proceedings against him shall be deemed to have commenced from the date of the order making him a party, but, if the application to add a person as a party defendant or garnishee is made at the trial, the judge may make the order in a summary manner upon such terms as to him seem just, and may dispense with the service of a copy of the summons if such person or his agent consents thereto. R.S.O. 1950, c. 106, s. 85.

Third  
party

**86.**—(1) Where a defendant claims to be entitled to contribution or indemnity from or any other relief over against a person not a party to the action or against another defendant, hereinafter called a third party, he may, within the time limited for entering his dispute, enter with the clerk his account, claim or demand in writing in detail, and, in cases of tort, particulars of his demand, against the third party stating the nature and grounds thereof, and shall at the same time deliver to the clerk a copy, and, if necessary, copies of his account, claim or demand, and shall pay to the clerk the prescribed fees.

Summons  
to third  
party

(2) The clerk upon receipt of the prescribed fees shall annex the account, claim or demand and particulars, if any, to a copy of the summons to the defendant and shall deliver a copy thereof to the proper person for service upon the third party.

Procedure

(3) The practice and procedure as between the defendant and the third party shall be the same *mutatis mutandis* as the practice and procedure as between a plaintiff and defendant, and the judge may make such direction as appears proper for having the question between the defendant and the third party most conveniently determined and as to the mode and extent in or to which the third party shall be bound

or made liable by the judgment in the action and may make such order or give such judgment against the third party as is required.

(4) Where a third party makes default in entering an appearance and if the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, direct such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party. Default of appearance

(5) A plaintiff shall not be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned, and such directions shall be given and terms imposed as are necessary to prevent delay of the plaintiff where it can be done without injustice to the defendant and the third party. R.S.O. 1950, c. 106, s. 86. Delay to be avoided

**87.** Where in an action in which the claim is not a debt or money demand the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, the plaintiff shall not be required to prove liability but shall prove the amount of his claim in court. R.S.O. 1950, c. 106, s. 87. Where no dispute, general rule

**88.—**(1) Where in an action for the recovery of a debt or money demand the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, final judgment may be entered by the clerk at any time within six months of the return of the summons, or, by the order of the judge, at any time thereafter for the amount claimed, and execution may issue thereon without prejudice to the right of the plaintiff to proceed for the remainder of his claim. Default judgment

(2) Where in an action for the recovery of a debt or money demand a notice of dispute is filed in respect of part only of the plaintiff's claim, subsection 1 applies to the other part of the claim. Dispute as to part of claim

(3) Judgment shall not be entered until the summons and claim with an affidavit of the due service of both have been filed. Proof of service

(4) The judge may set aside the judgment and permit the case to be tried on such terms as to him seem just. R.S.O. 1950, c. 106, s. 88. Judge may set aside judgment



Default judgment not to be entered until proper court proved

(5) Where a summons has been forwarded for service in another division under section 22 and the defendant does not leave a notice of dispute with the clerk within ten days of the service upon him of the summons and claim, the clerk shall not enter judgment until it is proved in court that the action was entered in the proper court, and, if the judge is satisfied that the action was not entered in the proper court, he shall transfer the case to the proper court on such terms as to him seem just. 1957, c. 29, s. 5; 1958, c. 25, s. 1.

Judgment by default under s. 88, where final judgment not entered

**89.** Where proof is made by affidavit or otherwise of the service of a debt or money demand summons and of the claim as required by section 88 and judgment has not been entered under such section, the judge may, if the defendant does not in person or by agent appear in open court as required by the summons, give judgment against him by default without requiring proof of the plaintiff's claim. R.S.O. 1950, c. 106, s. 89; 1954, c. 24, s. 2.

Motion for judgment

**90.**—(1) In an action for \$25 or more commenced by a debt or money demand summons, the plaintiff, on an affidavit made by himself or any other person swearing positively to the facts and verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the action, and the reasons why immediate judgment should be granted, may concurrently with the service of the debt or money demand summons, or at any subsequent time, serve the defendant with a notice of motion and copy of the affidavit, returnable not less than four clear days after service, to show cause before the judge why the plaintiff should not be at liberty to have final judgment entered by the clerk for the amount of the debt or money demand sought to be recovered, together with interest, if any, and costs.

Idem

(2) The judge thereupon, if the reasons for immediate judgment appear to be sufficient, unless the defendant or his agent by affidavit or otherwise satisfies him that the defendant has a good defence to the action on the merits, or discloses such facts as are deemed sufficient to entitle him to defend the action, may make an order empowering the clerk to sign final judgment.

How defendant may show cause

(3) The defendant may show cause by offering to bring into court the amount sought to be recovered, or by affidavit which shall state whether the defence he alleges goes to the whole or to part only, and if to part only, then to what part of the claim, and the judge may, if he thinks fit, order the defendant to attend and be examined upon oath, and to produce any books and documents, or copies thereof, or extracts therefrom.

(4) If it appears that the defence applies only to a part of the claim, or that part of the claim is admitted to be due, the plaintiff is entitled to have final judgment entered forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, payment of any amount levied, or any part thereof, into court by the bailiff, the taxation of costs or otherwise, as to the judge seems just, and the defendant may be allowed to defend as to the residue of the claim.

(5) If it appears to the judge that a defendant has a good defence, or ought to be permitted to defend, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff is entitled to have judgment entered against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former.

(6) Leave to defend may be given unconditionally or subject to such terms as to giving security or otherwise as to the judge seem just.

(7) Within seven days after making the order and upon good grounds being shown, the judge may set aside or vary the order upon such terms as to him seem just. R.S.O. 1950, c. 106, s. 90.

#### TRIALS, WITNESSES, EVIDENCE

**91.**—(1) Where a trial is to be had, the defendant shall either personally or by agent appear in the court to answer, and, on answer being made, the judge shall without further pleading or formal joinder of issue proceed in a summary way to try the action and give judgment, and, if satisfactory proof is not given entitling either party to judgment, he may nonsuit the plaintiff.

(2) No evidence shall be given of any cause of action except such as is contained in the claim as entered by the plaintiff, unless the judge in the special circumstances of any case otherwise directs. R.S.O. 1950, c. 106, s. 91.

**92.**—(1) The clerk shall place all actions in which the sum sought to be recovered exceeds \$100 at the foot of the trial list and the judge shall in such cases, unless an agreement not to appeal has been signed and filed as provided by section

107, take down the evidence in writing or cause the same to be taken down in shorthand by a shorthand writer appointed under section 13 of *The County Judges Act*, or by some other competent person.

R.S.O. 1960,  
c. 77

Evidence  
taken down  
by judge

(2) Where the evidence is taken down by the judge in writing, it shall be left with the clerk and, in the event of an application for a new trial, it shall be forwarded to the judge by the clerk for the purposes of the application.

Shorthand  
writer's  
notes

(3) Where the evidence is taken down in shorthand, it is not necessary for the shorthand writer to extend or transcribe his notes except in the case of an appeal or an application for a new trial.

Fees and  
expenses

(4) The fees and expenses of a shorthand writer appointed under section 13 of *The County Judges Act* attending for the purpose of taking down the evidence as provided in subsection 1 shall be borne and paid in the same manner as the fees and expenses of a shorthand writer attending a sittings of a county or district court. R.S.O. 1950, c. 106, s. 92.

Proceedings  
in case  
defendant  
does not  
appear

**93.** If the defendant does not appear at the trial or sufficiently excuse his absence, or if he neglects to answer, the judge, on proof of due service of the summons and particulars, may proceed with the trial in his absence, and, except where the plaintiff's claim is for unliquidated damages in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the judge may, in his discretion, give judgment without further proof. R.S.O. 1950, c. 106, s. 93.

Judge may  
adjourn  
hearing  
of cause

**94.** The judge may adjourn the trial of an action, whether it is being tried with or without a jury, to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable him to enter more fully into his case or for any cause that the judge thinks reasonable, upon such conditions as to payment of costs and admission of evidence, or otherwise, as to him seem just. R.S.O. 1950, c. 106, s. 94.

Parties may  
obtain  
subpoenas  
from clerk

**95.—(1)** A party may obtain from the clerk of any division court in the county a subpoena with or without the clause for the production of books, papers and documents, requiring any witness, resident in Ontario or served with the subpoena therein, to attend at a specified court or place before the judge, or an arbitrator appointed by him under the provisions hereinafter contained, and the clerk, when requested by a party or his agent, shall furnish copies of such subpoena.

(2) Any number of names may be inserted in a subpoena, <sup>Service of subpoena</sup> and service thereof may be made by any literate person personally or by leaving a copy thereof at the usual place of abode of the witness, and proof of service and of tender or payment of witness fees and mileage may be received by the judge, either orally or by affidavit. R.S.O. 1950, c. 106, s. 95.

**96.**—(1) Every person served with a copy of a subpoena <sup>Penalty for disobeying subpoena or refusing to be sworn</sup> to or for whom at the time of service a tender or payment of his witness fees and mileage has been made, who refuses or neglects without sufficient cause to obey the subpoena, and every person in court called upon to give evidence who refuses to be sworn or to give evidence, is liable to pay such fine, not exceeding \$8, as the judge orders, and shall be also liable to imprisonment for a term not exceeding ten days on the order of the judge.

(2) The fine shall be levied and collected with costs by the same process as a judgment recovered in the court, and the <sup>Enforcing payment of fine</sup> whole or any part of the fine, after deducting the costs, is applicable, in the discretion of the judge, towards indemnifying the party injured by such refusal or neglect, and the remainder forms part of the Consolidated Revenue Fund. R.S.O. 1950, c. 106, s. 96.

**97.**—(1) If a party is desirous of having at the trial or <sup>Power to issue commissions to take evidence</sup> hearing the testimony of a person residing out of Ontario, the judge, upon hearing the parties, may order the issue of a commission out of and under the seal of the court to a commissioner to take the examination of such person.

(2) An order shall not be made for the issue of a commission <sup>Applicant and employees</sup> for taking the testimony of the party applying therefor, or of any person in his employment, unless in the opinion of the judge a saving of expenses will be caused thereby, or unless it is clearly made to appear that the party or person is aged, infirm, or unable from sickness to appear as a witness.

(3) If it is made to appear to the judge that a material and <sup>Persons in Ontario</sup> necessary witness residing in Ontario is sick, aged or infirm, or that he is about to leave Ontario, and that his attendance as a witness cannot be procured, the judge may make an order appointing a suitable person to take his testimony.

(4) An order may also be obtained for the examination of <sup>Idem</sup> a witness who resides in a remote part of Ontario and at a great distance from the place of trial, if it is made to appear that his attendance cannot be procured, or that the expense of his attendance would be out of proportion to the amount

involved in the action, or so great that the party desiring his attendance should not under the circumstances be required to incur such expense.

Service of  
order

(5) A copy of the order, with two days notice of the time and place of the examination, shall be served upon the opposite party, or his agent, who may appear and cross-examine the witness.

Rules, S.C.O.

(6) The rules of the Supreme Court, so far as they are applicable, apply to every commission or order issued under this section.

Costs of  
commission

(7) The costs of the issue, transmission, execution and return of a commission issued or order made under this section are in the discretion of the judge, who may allow a sum in gross therefor, and the costs may be added to any other costs to be paid to the party entitled thereto, and may be recovered in like manner as the ordinary costs of an action. R.S.O. 1950, c. 106, s. 97.

Admissi-  
bility of  
books of  
account

**98.** In an action for a debt or money demand of not more than \$25, and in case of a defence of set-off or of payment so far as it extends to \$25, the judge, on being satisfied of their general correctness, may receive the plaintiff's, defendant's or garnishee's books as evidence, and may also receive as evidence the affidavit of any party or witness resident out of the county, but may require the party or witness to answer written interrogatories upon oath. R.S.O. 1950, c. 106, s. 98.

When  
evidence  
may be  
given by  
affidavit

**99.—(1)** In an action, the judge may in his discretion permit the evidence of any person out of the jurisdiction or in some remote part of Ontario to be given by affidavit upon such terms as to cross-examination, the answering of written interrogatories upon oath and the production of books and papers for inspection and otherwise as are deemed necessary.

Costs  
occasioned  
by objection  
to affidavit  
evidence

(2) Where in the opinion of the judge expense is unnecessarily incurred by reason of any objection of either party to the reception of affidavit evidence or by cross-examination, he may order that party to pay the costs of both parties occasioned by the objection. R.S.O. 1950, c. 106, s. 99.

Who may  
act as  
agents  
at trial

**100.** A barrister or solicitor, or any other person not prohibited by the judge, may appear at the trial or hearing of an action as agent for a party thereto. R.S.O. 1950, c. 106, s. 100.

**101.** The judge shall, in court, openly, and as soon as may be after the trial, pronounce his decision, but, if he is not then prepared to pronounce a decision, he may postpone it until it is convenient for him to give it, and he shall then send it to the clerk, who shall forthwith enter the judgment and by registered mail notify the parties or their agents thereof. R.S.O. 1950, c. 106, s. 101.

Judge may give judgment instant or postpone judgment

**102.—**(1) The judge may order the times and the proportions in which a sum and costs recovered by judgment shall be paid, having regard to section 116.

Order as to payment

(2) Unless otherwise ordered, execution shall not issue within fifteen days after the entry of judgment, but the judge may order the amount of the judgment or any instalment thereof to be paid into court. R.S.O. 1950, c. 106, s. 102.

Execution not to issue for 15 days after judgment

**103.—**(1) Unless otherwise provided, the costs of and incidental to all actions are in the discretion of the judge, who has full power to determine by whom and to what extent costs shall be paid.

Judge's authority as to costs

(2) If the judge does not make an order as to costs, they abide the event of the action.

Costs to abide event except by order

(3) Where the plaintiff does not appear or does not prove his claim, the judge may award to the defendant a sum for his trouble and attendance not exceeding what he would be entitled to if a witness on his own behalf, to be recovered by execution.

Allowance to defendant for attendance

(4) Where the plaintiff fails to recover judgment by reason of the court not having jurisdiction, the judge nevertheless has the power conferred by subsection 1, and the recovery of the costs awarded may be enforced by the same remedies by which costs of proceedings within the proper competence of the court are recoverable. R.S.O. 1950, c. 106, s. 103.

Costs when action fails for want of jurisdiction

**104.—**(1) Where in an action for more than \$100 that is contested as to liability or quantum, and in the cases mentioned in clauses *b* and *c* of section 108, a counsel or solicitor has been employed by the successful party in the conduct of the cause or defence, the judge may direct that a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$40 or, if the case occupies more than one day, to not more than \$50, be allowed to the successful party and it shall be added to the costs.

Counsel fee, where action contested

where  
assessment  
uncontested

(2) Where in an assessment of damages, upon which the defendant does not appear personally or by counsel and in which judgment is given for more than \$100, a counsel or solicitor has been employed by the plaintiff, the judge may direct that a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$25, be allowed to the plaintiff and it shall be added to the costs.

where  
adjournment

(3) Where a party applies for and obtains an adjournment in an action involving more than \$100 that is contested as to liability or quantum, the presiding judge may, if he is of opinion that counsel for any of the other parties has been unduly inconvenienced by the adjournment, award him a counsel fee of \$10. R.S.O. 1950, c. 106, s. 104.

Costs of  
witnesses  
in certain  
cases

**105.** Where the defendant having disputed the plaintiff's claim, afterwards and before the opening of the court, confesses judgment or pays the claim so short a time before the sittings of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff *bona fide* and reasonably incurs expenses in procuring witnesses or in attending at court, the judge may order the defendant to pay such costs or such portion thereof as to him seem just. R.S.O. 1950, c. 106, s. 105.

#### NEW TRIALS: APPEALS

New trial

**106.**—(1) Upon application made within fourteen days after the trial or, where the decision is not given at the trial, after the mailing of the notice of the decision to the party applying and upon good grounds being shown, the judge, after affording the other parties to the action an opportunity to be heard, may grant a new trial upon such terms as he thinks proper.

Extending  
time for  
application

(2) If reasonable excuse for the delay is shown to the satisfaction of the judge, the application may be made at any time within fourteen days after the expiration of the first-mentioned fourteen days.

Where  
personal  
service  
not affected

(3) Where the summons has not been personally served, the application may be made at any time within fourteen days after the judgment has come to the knowledge of the defendant.

Judgment on  
application  
for new trial

(4) Instead of granting a new trial, the judge may pronounce the judgment that in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly.

(5) Either upon the application or upon granting a new trial, the judge may make such order staying proceedings as he deems proper, R.S.O. 1950, c. 106, s. 106. Stay of proceedings

**107.** An appeal does not lie if, before the commencement of the trial, there is filed with the clerk an agreement in writing not to appeal, signed by the parties or their agents, and the judge shall note in his minutes whether or not the agreement was so filed, and the minutes are conclusive evidence upon that point. R.S.O. 1950, c. 106, s. 107. Parties may agree not to appeal

**108.** Subject to section 107, an appeal lies to the Court of Appeal from the decision of the judge at or after the trial or upon an application for a new trial, except in cases where a new trial has been granted, Appeal to Court of Appeal

- (a) in an action or garnishee proceeding where the sum in dispute exceeds \$100, exclusive of costs;
- (b) in interpleader where the money or the value of the goods or chattels claimed or proceeds thereof exceed \$100, or where the damages claimed by or awarded to either party against the other or against a bailiff exceeds the sum of \$60;
- (c) where the parties consent to an appeal; or
- (d) where the effect of the decision is to determine that a general assessment made by a mutual insurance company is invalid, but the company, unless the Court of Appeal otherwise directs, shall pay the respondent's costs of the appeal between solicitor and client on the county court scale in any event. R.S.O. 1950, c. 106, s. 108.

**109.** Where a claim and counterclaim arise out of the same transaction or occurrence and an appeal is brought from the judgment upon either, the judgment upon both is subject to review by the court. R.S.O. 1950, c. 106, s. 109. Appeal, where counter-claim

**110.—(1)** Where an appeal lies, each party shall, before or at the trial, leave with the clerk a memorandum in writing of the name and place of residence of some person resident in the county town upon whom the notice of appeal, and all other papers thereafter requiring service, may be served for him, and service upon such person, or, in his absence, at his place of residence, is sufficient, and, in the event of failure to leave such memorandum, all papers requiring service upon the party so failing may be served upon the clerk, or left at Agents for service where right to appeal



his office, and the clerk shall forthwith send, by registered mail, all papers so served upon him, to the person entitled thereto.

Case of  
judicial  
district

(2) This section does not apply to a provisional judicial district. R.S.O. 1950, c. 106, s. 110.

Certified  
proceedings,  
etc., to be  
furnished  
by clerk

**111.** The clerk shall, at the request of the appellant or his agent, certify under his hand to the Registrar of the Supreme Court at Osgoode Hall, Toronto, the summons with all notices endorsed thereon, the claim, and any notice of defence, the evidence and all objections and exceptions thereto, and all motions or orders made, granted, or refused therein, together with such notes of the judge's charge as were made, the decision when in writing, or the notes thereof, and all affidavits and other papers in the action, and shall furnish to the parties, when required so to do, copies of the proceedings so certified, or such part thereof as is required, and for every copy he is entitled to receive 5 cents for every 100 words. R.S.O. 1950, c. 106, s. 111.

Appeal,  
when and  
how made

**112.—**(1) The appeal shall be made in the time and manner prescribed by the rules of court and shall be heard and determined by one justice of appeal.

Stay of  
proceedings

(2) After the appeal has been set down to be heard, the execution of the judgment appealed from shall be stayed pending the appeal, unless otherwise ordered by a judge of the Supreme Court. R.S.O. 1950, c. 106, s. 112.

Powers and  
duties of  
Court of  
Appeal  
R.S.O. 1950,  
c. 76

**113.** On an appeal to the Court of Appeal under this Act, the Court of Appeal has the same powers and duties as in an appeal coming before it under *The County Courts Act* and the practice and procedure applicable thereto applies *mutatis mutandis* to appeals under this Act. R.S.O. 1950, c. 106, s. 113.

Taxable  
costs on  
appeal

**114.** The costs taxable between party and party of and incidental to an appeal are the actual disbursements, and no greater amount over and above actual disbursements than \$25 inclusive of counsel fee, and the costs of an appeal between solicitor and client are taxable on the county court scale. R.S.O. 1950, c. 106, s. 114.

#### JUDGMENTS; EXECUTIONS; TRANSCRIPTS

When money  
not paid  
pursuant  
to order,  
execution  
o issue

**115.—**(1) Where the judge gives judgment or makes an order for the payment of money and default is made in payment of the whole or of any part thereof, the party in whose

favour the order has been made is entitled to execution against the goods and chattels and, subject to section 125, the land of the party in default.

(2) The clerk, at the request of the party prosecuting the judgment or order, shall issue an execution to a bailiff of the court, or to a bailiff of any other court in the county, who by virtue thereof shall levy by distress and sale of the goods and chattels of the party in default such sum and costs, with interest thereon from the date of the order or of the entry of the judgment, as have been ordered to be paid and remain due, and shall pay such sum, costs and interest over to the clerk.

(3) The bailiff of a division court has jurisdiction throughout the county to enforce execution and levy by distress and sale of the goods and chattels of the debtor the amount of any judgment and costs and to carry out all other process and proceedings to enforce payment of the judgment, and, where the limits of a division court include parts of two counties, such jurisdiction applies throughout both of such counties, but, where a bailiff goes outside the limits of the division for which he is appointed under this subsection, he is not entitled to any mileage allowance in respect of travel outside such division. R.S.O. 1950, c. 106, s. 115.

**116.** Except where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from the service of the summons, without the consent of the party entitled thereto, but, if it is proved to the satisfaction of the judge that a party is unable from sickness or other cause to pay the debt or damages recovered against him, or any instalment thereof ordered to be paid, or that for any other reason the issue of execution should be further postponed, the judge may stay the judgment, order or execution for such time and on such terms as he thinks fit, and so from time to time until it is proved that the cause of disability has ceased. R.S.O. 1950, c. 106, s. 116.

**117.** If there are cross judgments between the parties, the party who has obtained judgment for the larger sum shall have execution for the excess and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered, and, if both sums are equal, satisfaction shall be entered upon both judgments. R.S.O. 1950, c. 106, s. 117.

**118.** Except in actions brought under section 65, an execution or attachment shall not be executed out of the limits of the county over which the judge of the court from

which the execution or attachment issues has jurisdiction. R.S.O. 1950, c. 106, s. 118.

Effect of  
payment of  
execution  
before sale

**119.** Where the party against whom an execution has been issued pays or tenders to the clerk or to the bailiff, before an actual sale of his goods and chattels, the amount to be levied or so much thereof as the party in whose favour the execution has issued agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the bailiff shall withdraw from possession. R.S.O. 1950, c. 106, s. 119.

Notice to  
plaintiff of  
*nulla bona*  
return

**120.**—(1) The clerk, immediately after a return of *nulla bona* has been made to an execution issued on a transcript of judgment, shall forward by registered mail to the plaintiff and to the clerk who issued the transcript a notice informing them of the date at which the execution issued, the date at which it was returned by the bailiff, and the return made.

Registration  
certificate  
to be filed

(2) The clerk shall file among the papers in the action the post-office certificate of registration, and the absence from among the papers of the certificate is *prima facie* evidence against the clerk that the notice was not forwarded. R.S.O. 1950, c. 106, s. 120.

Enforcing  
claims under  
R.S.O. 1960,  
c. 78  
in division  
courts

**121.** Where a memorandum of the amount of a judgment or execution or a certificate of a claim within the jurisdiction of a division court is filed with a sheriff under *The Creditors' Relief Act*, and the amount is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain from the sheriff a return according to the fact and file it with the clerk of the court in which the judgment was recovered, or, in the case of a certificate of a claim, with the clerk of the court of the division where the cause of action arose or where the debtor or one of the debtors, if more than one, resides, and the clerk shall enter the return in his procedure book, and in the latter case the claim thereupon becomes a judgment of the court for the unpaid balance due thereon appearing by the return and may be enforced in the same manner as a judgment of the court. R.S.O. 1950, c. 106, s. 121.

Revivor of  
judgment in  
case of death  
of party

**122.** In the case of the death of either or both of the parties to a judgment, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may in the prescribed form revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon. R.S.O. 1950, c. 106, s. 122.

**123.**—(1) Every execution against goods shall bear the date of its issue and is returnable immediately after the execution thereof, and, if unexecuted, remains in force for three months, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for six months from the date of the renewal.

Execution,  
when dated  
and  
returnable

(2) The execution so renewed has effect and is entitled to priority according to the time of the original delivery thereof to the bailiff. R.S.O. 1950, c. 106, s. 123.

Priority of  
execution

**124.** Where the judge is satisfied by the oath of the execution creditor or by other testimony that he will be in danger of losing the amount of the judgment if compelled to wait until the day appointed for the payment thereof before an execution can issue, the judge may order an execution to issue at such time as he deems just. R.S.O. 1950, c. 106, s. 124.

Judge may  
order an  
execution  
to issue  
before  
regular day

**125.**—(1) Where the sum remaining unsatisfied on a judgment amounts to \$40 or upwards, the judgment creditor is entitled to an execution against the land of the judgment debtor, and the clerk, at the request of the party prosecuting the judgment, shall issue an execution against the land of the judgment debtor directed to the sheriff of a county.

Executions  
against  
lands

(2) The execution has the same force and effect as an execution issued from a county court.

Effect of  
execution

(3) Where an execution against lands has been placed in the hands of the sheriff, he shall give notice thereof to the judgment debtor by registered mail addressed to him at his present or last known residence.

Notice  
to debtor

(4) The sheriff shall make a return thereof and pay any money made thereon to the clerk of the court out of which the execution issued.

Sheriff's  
return to be  
made to  
clerk

(5) Until the judgment is fully satisfied, the execution creditor may pursue the same remedy for the recovery thereof as if the judgment had been obtained in the county court.

Further  
proceedings  
by execution  
creditor

(6) The writ, if unexecuted, remains in force for three years only from its issue, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for three years from the date of the renewal.

Duration  
and renewal  
of writ

Formal  
effect of  
renewal

(7) The execution may be renewed by being marked on the margin with a memorandum signed by the clerk stating the day, month and year of the renewal, and a writ so renewed has effect and is entitled to priority according to the time of the original delivery thereof to the sheriff.

Evidence of  
renewal

(8) The production of an execution purporting to be marked with the memorandum is *prima facie* evidence of its having been renewed.

Fees on  
writ against  
lands

(9) The sheriff is entitled to the same fees as upon a writ of execution against land issued from a county court.

Certificate  
in lieu of  
execution

(10) Where land is on hand for want of buyers, a sheriff to whom the execution is directed may endorse thereon a return of "land on hand for want of buyers" and shall return a certificate of the endorsement to the clerk of the division court from whose office the execution issued in lieu of the writ, and the endorsement and the certificate so returned shall be deemed to be a return of the writ, and thereupon a writ of *venditioni exponas* may be issued by the clerk for the sale of the land, and the original execution remains in force for the residue. R.S.O. 1950, c. 106, s. 125.

Bailiff after  
seizure of  
goods to  
endorse date  
of seizure  
and give  
notice of sale

**126.** The bailiff, after making a seizure under an execution against goods, shall endorse thereon the date of the seizure, and shall immediately and at least eight days before the time appointed for the sale put up at three of the most public places in the division where any property liable to be sold under the execution has been taken, public notice, signed by himself, of the time and place in the division when and where it will be exposed for sale, and the notice shall describe the property taken. R.S.O. 1950, c. 106, s. 126.

Goods not  
to be sold  
until 8  
days after  
seizure

**127.** The property so taken shall not be sold until the expiration of eight days at least after the seizure thereof, except upon the request in writing under the hand of the party whose property has been seized. R.S.O. 1950, c. 106, s. 127.

Bailiff's  
fees when  
action  
settled

**128.** Where a bailiff has seized property under an execution or attachment and the action is afterwards settled between the parties, or the defendant makes an assignment for the general benefit of his creditors, the bailiff, until his fees and disbursements are fully satisfied, has a lien therefor upon so much of the property as will reasonably satisfy such fees and disbursements, but, in the event of a dispute as to the proper amount of the fees and disbursements, the amount claimed therefor may be paid into court until the proper

amount is certified by the judge, and on such payment into court the lien ceases. R.S.O. 1950, c. 106, s. 128.

**129.**—(1) The clerk, upon the application of a person having an unsatisfied judgment in his favour, shall prepare a transcript of the judgment in the prescribed form, and shall send it to the clerk of any other division court, whether in the same or in any other county, with the certificate at the foot thereof signed by him, sealed with the seal of the court, and addressed to the clerk of the court to whom it is to be sent, stating the amount unpaid upon the judgment, the date at which it was recovered, and the post-office address of the person applying for the transcript, and the clerk to whom the certificate is addressed shall, on the receipt of the transcript and the certificate, enter the transcript and the amount due on the judgment according to the certificate in a book to be kept in his office for the purpose, and all proceedings may be taken for enforcing the judgment in such last-mentioned court.

(2) After a transcript has been issued under this section, no further proceedings shall be had in the court from which the transcript issued without an order from the judge, unless the person who obtained the transcript, or his agent, makes and files with the clerk an affidavit stating, <sup>Proceedings stayed</sup>

- (a) that the judgment remains unsatisfied in whole or in part;
- (b) that the execution issued out of the court to which the transcript was sent has been returned *nulla bona*, or that he believes the judgment debtor has not sufficient goods in the division of that court to satisfy the judgment,

and, upon the affidavit being filed, the clerk may issue such other process as the applicant is entitled to and may direct. R.S.O. 1950, c. 106, s. 129.

(3) Where a person has a judgment in the Supreme Court or in a county or district court and he desires to garnish the wages of the judgment debtor, he may file a certified copy of the judgment in the division court having jurisdiction to issue a direction to garnish the wages of the judgment debtor, and thereupon the clerk of that court shall enter the judgment in the same manner as a transcript of judgment from another division court, and thereafter directions to garnish the wages of the judgment debtor may issue and <sup>Transfer of Supreme Court and county court judgments</sup>

subsequent proceedings thereon be taken as though the direction to garnish had been issued under a division court judgment. 1957, c. 29, s. 6.

Maximum  
amount of  
judgment  
against a  
garnishee

(4) Where directions to garnish are issued under subsection 3 and judgment is given against the garnishee, the judgment shall not be for an amount exceeding the jurisdiction of the court in a personal action. 1958, c. 25, s. 2.

#### JUDGMENT SUMMONS: SHOW CAUSE SUMMONS

Judgment  
summons

**130.**—(1) A party having an unsatisfied judgment may procure a judgment summons from the court out of which execution might issue, if the judgment debtor resides or carries on business within the limits of that court.

Judgment  
summons,  
issue of

(2) Where a judgment debtor resides or carries on business in a city where there are two or more division courts having territorial jurisdiction within the limits of the city, a judgment summons may issue out of any such court in which the judgment has been recovered or in which a transcript of judgment has been entered. R.S.O. 1950, c. 106, s. 130 (1, 2).

Metropolitan  
Toronto

(3) Subsection 2 does not apply to division courts in The Municipality of Metropolitan Toronto. 1957, c. 29, s. 7.

Affidavit  
required  
before  
judgment  
summons

(4) Before the summons is issued the judgment creditor, or his agent, shall make and file with the clerk an affidavit stating,

(a) that the judgment remains unsatisfied in whole or in part; and

(b) in the case of a second or subsequent summons, that the deponent believes that the judgment debtor sought to be examined is able to pay the amount due in respect of the judgment or some part thereof, or that he has rendered himself liable to be committed to jail under this Act.

Examination  
of judgment  
debtor

(5) The summons shall be served personally upon the judgment debtor at least eight days before the return day, and, if he appears, he may be examined upon oath as to any and what debts are owing to him and touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability that formed the subject of the action, and as to the means and expectation he then had, and as to the property and

means he still has of discharging the judgment debt, and as to the disposal he has made of any property.

(6) The party obtaining the summons and all witnesses whom the judge thinks requisite may be examined upon oath, touching the inquiries. Examination of witnesses

(7) The examination shall not be held in open court unless the judge so directs. Place of examination

(8) After the examination or upon written consent signed by the judgment debtor or his solicitor, the judge may make such order as to payment of the judgment and as to the time and manner thereof as he deems proper. Order as to payment

(9) The costs of the summons and of all proceedings thereon shall be costs in the action, unless the judge otherwise directs. Costs

(10) If, after the examination, the judge dismisses the summons, no further judgment summons shall issue out of the same court against the judgment debtor at the suit of the same or any other creditor for a period of six months, except upon an affidavit satisfying the judge that since the examination the party has acquired the means of paying or that he did not then make a full disclosure of his estate, effects and debts upon the examination. R.S.O. 1950, c. 106, s. 130 (3-9). Party examined and discharged not to be again summoned

**131.**—(1) A party who has examined a judgment debtor under a judgment summons may procure a show cause summons from the court out of which the judgment summons issued if the judgment creditor or his agent makes and files with the clerk of the court an affidavit deposing, Show cause summons

- (a) the particulars of the judgment and the amount thereof that remains unsatisfied;
- (b) the particulars of the examination upon the judgment summons and of the order for payment that was made; and
- (c) that the judgment debtor is in default under the order for a period of not less than fourteen days and the particulars thereof.

(2) The summons shall be served personally upon the judgment debtor at least eight days before the return day and, if he appears, he may be examined upon oath as to his default under the order for payment. Service



Determina-  
tion re  
default

(3) At the hearing the judge shall determine whether the default under the order for payment was wilful.

Where  
default  
wilful

(4) Where the judge finds that the default was wilful, he may commit the judgment debtor under section 132 for contempt of court.

Where  
default not  
wilful

(5) Where the judge finds that the default was not wilful, the judgment debtor may be examined as upon a judgment summons and the judge may make an order accordingly. R.S.O. 1950, c. 106, s. 131.

When  
judgment  
debtor  
may be  
committed  
to jail

**132.** If the party summoned,

(a) does not attend as required by the summons, or at any subsequent date to which the hearing or examination is adjourned, or give a sufficient reason for not attending; or

(b) attends and refuses to be sworn or to answer such questions as in the opinion of the judge are proper,

or, if it appears to the judge, by the examination of the party or by other evidence, that he,

(c) obtained credit from the judgment creditor or incurred the debt or liability under false pretences, or by means of fraud or breach of trust; or

(d) has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed any property with intent to defraud his creditors or any of them; or

(e) had, when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments that the court in which the judgment was obtained ordered, without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to make payment as ordered,

the judge may order him to be committed to the jail of the county in which he resides or carries on business, for any period not exceeding forty days. R.S.O. 1950, c. 106, s. 132.

When party  
may be  
committed  
for non-  
attendance

**133.** A party failing to attend in answer to a judgment summons or show cause summons is not liable to be committed for the default, unless the judge is satisfied that his non-attendance is wilful. R.S.O. 1950, c. 106, s. 133.

**134.**—(1) Where a judge has ordered a judgment debtor to be committed to jail, the order shall be enforced by the bailiff, unless the judge directs that the judgment debtor appear before him at a named time and place to explain his contempt, in which case notice thereof shall be sent to the judgment debtor by registered mail.

Enforce-  
ment of  
committal  
order

(2) Where the judgment debtor appears to explain his contempt,

Appearance  
to explain  
contempt

(a) if the judge is of opinion that the default was wilful, he shall order the bailiff to enforce the warrant of commitment; or

(b) if the judge is of opinion that the default was not wilful, he shall order the judgment debtor to attend for examination at the next sittings of the court to be held for the hearing of judgment summonses and, in the event that the judgment debtor does not so attend, the judge presiding at the sittings may order that he be forthwith committed to jail.

(3) Where the judgment debtor does not appear at the time and place named in the notice, the judge may direct that the warrant of commitment be enforced. R.S.O. 1950, c. 106, s. 134.

Non-  
appearance  
to explain  
contempt

**135.** Where at the hearing upon a judgment summons or show cause summons it appears to the judge by the examination of the party, or otherwise, that he ought not to have been summoned, or, where the judgment creditor or his agent does not appear, the judge may award the party summoned compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as a judgment of the court. R.S.O. 1950, c. 106, s. 135.

Costs  
allowed  
him in  
certain  
cases

**136.**—(1) Where an order of commitment has been made, the clerk shall issue, under the seal of the court, a warrant of commitment directed to the bailiff of any court in the county, upon which shall be endorsed a memorandum of the amount due under the judgment, and the bailiff may, by virtue of the warrant, take the party and deliver him to the keeper of the jail in which he has been directed to be imprisoned.

Warrant of  
commitment

(2) All constables and other peace officers within their respective jurisdictions shall aid in the execution of the warrant, and the keeper of the jail shall receive and keep the party therein until discharged under this Act, or otherwise, in due course of law. R.S.O. 1950, c. 106, s. 136.

Constables,  
etc., to  
execute  
warrants

When debtor  
in custody  
shall be  
discharged

**137.** A party shall be discharged out of custody,

(a) by order of the judge; or

(b) at the expiration of the time prescribed in the warrant of commitment. R.S.O. 1950, c. 106, s. 137.

Alteration  
of order  
for  
payment

**138.**—(1) The judge may rescind or alter the order for payment made upon a judgment summons or show cause summons and make any further or other order for the payment of the debt or damages recovered and costs forthwith, or by instalments, or in any other manner that the thinks reasonable.

Order of  
commitment

(2) The judge may rescind or alter or stay the operation of any order of commitment made by him, whether or not it has been acted on. R.S.O. 1950, c. 106, s. 138.

Examination  
of officer  
of company

**139.**—(1) A party having an unsatisfied judgment against a corporation may issue a summons calling upon any officer of the corporation to attend before the judge and submit to examination as to the property and assets of the corporation and its dealings with them, and, if the person summoned fails to attend or to submit to examination, he is liable to be committed to the jail of the county for any period not exceeding forty days.

Summons

(2) The summons shall be issued and served as nearly as may be in the same manner as in the case of a summons to a judgment debtor. R.S.O. 1950, c. 106, s. 139.

Debt not  
to be  
extinguished  
by im-  
prisonment

**140.** Imprisonment under this Act does not extinguish the judgment or affect any order for payment that has been made, or protect the judgment debtor from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned, or deprive the judgment creditor of the right to execution on his judgment. R.S.O. 1950, c. 106, s. 140.

#### GARNISHMENT PROCEEDINGS

Interpre-  
tation

**141.** For the purposes of garnishment proceedings under this Act,

(a) money that is earned or owing, although not yet due or payable, is deemed to be "owing or accruing"; and

(b) a reference to the amount of the judgment creditor's judgment or the plaintiff's claim, or words of like

import, is deemed to include the amount of costs that have been incurred. R.S.O. 1950, c. 106, s. 141.

**142.**—(1) After judgment has been recovered, the clerk of the court in which the judgment was recovered or the clerk <sup>Garnishment after judgment</sup> of the court to which the judgment has been transcribed shall, upon the filing of an affidavit as required by subsection 2, issue a direction to garnish directing that all debts owing or accruing to the judgment debtor be attached to satisfy the judgment.

(2) Upon the making of the application, there shall be <sup>Material on application</sup> filed with the clerk an affidavit stating,

- (a) the date and amount of the judgment and the amount remaining unsatisfied;
- (b) that the deponent has reason to believe that the person sought to be named as garnishee,
  - (i) resides or carries on business in the county where the court is located, and
  - (ii) is indebted to the judgment debtor;
- (c) where the judgment creditor intends to effect service of the direction by registered mail, the address where the judgment debtor and garnishee reside or carry on business; and
- (d) where the judgment creditor seeks to obtain a direction to garnish in respect of wages and without exemption, that the debt was incurred for board or lodging or that the judgment debtor is an unmarried person having no one dependent upon him for support.

(3) The direction to garnish, which shall be in the pre-<sup>Preparation of affidavit and direction</sup>scribed form, and the affidavit used upon the application therefor shall be prepared,

- (a) where the judgment creditor has a solicitor or agent, by the solicitor or agent; and
- (b) where the judgment creditor has no solicitor or agent, by the judgment creditor or, if he so requests, by the clerk of the court. R.S.O. 1950, c. 106, s. 142.

Notices  
upon a  
direction

**143.** The following notices shall appear upon every direction to garnish:

A

NOTICE TO GARNISHEE

Within ten days after the mailing to you or personal service upon you of this direction you are required to either,

- (a) pay to the clerk of the court the amount owing or accruing from you to the judgment debtor or sufficient thereof to satisfy the judgment of the judgment creditor including costs; or
- (b) file with the clerk of the court a statement signed by you stating,
  - (i) that at the time of the receipt by you of this direction to garnish there was no money owing or accruing from you to the judgment debtor, and
  - (ii) where you rely upon a statutory or other defence or set-off, the particulars thereof.

Where an amount less than the amount of the judgment debt is paid to the clerk of the court, you are required to file with the clerk a statement signed by you in explanation thereof.

Upon your default in complying with the requirement above set out, the judgment creditor may apply to the court for judgment against you, the garnishee, for an amount equal to the unpaid portion of his judgment against the judgment debtor and for his costs.

Where the amount sought to be garnished is wages, this notice shall be read subject to *The Wages Act*.

B

NOTICE TO JUDGMENT DEBTOR

At any time within ten days after the mailing to or personal service upon you of this direction you may dispute this direction to garnish or any of the statements therein contained by filing with the clerk of the court a notice setting out the particulars of your dispute.

C

NOTICE TO ALL PARTIES TO THIS  
PROCEEDING

Any of the parties to this proceeding, that is to say, any judgment creditor, judgment debtor or garnishee, may in writing request the clerk of the court to place it upon the trial list in order that the rights of any such party may be determined.

R.S.O. 1950, c. 106, s. 143.

Service of  
direction to  
garnish

**144.**—(1) The direction to garnish shall be served upon both the judgment debtor and the garnishee as soon as is convenient, and, in any event, not more than fifteen days after its issue.

(2) Service may be effected,

Method of  
service

(a) by personal service; or

(b) by registered mail addressed to each or either of them at the address set out in the affidavit referred to in section 142. R.S.O. 1950, c. 106, s. 144.

**145.** Service upon the garnishee of the direction to garnish has the effect, subject to the rights of other persons, of attaching and binding in his hands all debts then owing or accruing from him to the judgment debtor, and payment by the garnishee into court of the debt so attached to the extent to which the judgment is unsatisfied is to that extent a discharge of the debt. R.S.O. 1950, c. 106, s. 145.

Effect of  
service

**146.** Subject to any request for a hearing by a judge, money paid into court by a garnishee pursuant to a direction to garnish shall, upon the filing with the clerk of an affidavit proving service upon the judgment debtor of the direction to garnish, be paid out to the judgment creditor, but no such payment to the judgment creditor shall be made until fifteen days after the date of such service. R.S.O. 1950, c. 106, s. 146.

Payment  
out

**147.** Payment by the garnishee after service on him of the direction to garnish, otherwise than into court, except by leave of the judge, is, to the extent of the judgment creditor's claim and costs, void, and the garnishee is liable to again make payment to the extent of the judgment creditor's claim, unless the judge otherwise orders. R.S.O. 1950, c. 106, s. 147.

Payment  
to any but  
primary  
creditor void

**148.—(1)** Where a party requests the clerk in writing to place the proceeding upon the trial list, the clerk shall place it upon the list for the first court day in respect of which notice as herein required may be given, and at least ten days before such day shall mail notice thereof by registered mail to each of the parties to the proceeding.

Hearing  
required

(2) Upon the hearing, the judge shall determine the matter in a summary manner and make such order as he deems fit, and, where the garnishee has defaulted under the notice lettered A set out in section 143, he may give judgment in favour of the judgment creditor against the garnishee.

Disposition  
at hearing

(3) Upon a hearing, in determining any question of liability as between the judgment debtor and the garnishee, the judge shall have regard to any statutory or other defence or set-off that has been set up by the garnishee. R.S.O. 1950, c. 106, s. 148.

Defences of  
garnishee

Adverse  
claims

**149.** Where a person other than the judgment creditor or judgment debtor claims to be entitled to the debt owing or accruing from the garnishee or any part thereof by assignment or otherwise, the judge, after notice to all persons interested, may inquire into and decide upon the claim, and, where there is more than one claim, decide upon the priority in which the respective claims are entitled to rank on the debt as the justice of the case requires. R.S.O. 1950, c. 106, s. 149.

Costs where  
garnishee  
unsuccessful

**150.** Where a direction to garnish has been issued and no moneys are realized thereon, the costs thereof shall not be costs against the judgment debtor, unless the judge, who may give his direction upon an *ex parte* application, otherwise directs. R.S.O. 1950, c. 106, s. 150.

Garnishment  
before  
judgment

**151.**—(1) Where a judgment has not been recovered, a plaintiff in an action in which a debt or money demand summons may be issued may cause to be issued out of the court of the division in which the garnishees, or one of them, if they are joint garnishees, reside or carry on business, a garnishment summons with the particulars of his claim against the defendant with reasonable certainty and detail attached thereto or endorsed thereon.

Summons  
to be  
deemed  
debt or  
money  
demand  
summons

(2) As between the plaintiff and the defendant, the garnishment summons shall be deemed a debt or money demand summons, and the provisions of this Act applicable to a debt or money demand summons and proceedings thereon apply.

Service of  
summons

(3) A copy of the garnishment summons and particulars shall be served on the defendant and on the garnishee in the manner provided for the service of a summons in other actions. R.S.O. 1950, c. 106, s. 151.

Form of  
garnishment  
summons

**152.** A garnishment summons shall be in the same form as a summons to a defendant, but,

(a) the name of the garnishee shall appear in the style of cause; and

(b) the following notice shall appear thereon:

#### NOTICE TO GARNISHEE

Within ten days of the service upon you of this summons you are required to either,

(a) pay to the clerk of the court the amount owing or accruing from you to the defendant or sufficient thereof to satisfy the claim of the plaintiff including costs; or

- (b) file with the clerk of the court a statement signed by you stating,
- (i) that at the time of the receipt by you of this summons there was no money owing or accruing from you to the defendant, and
  - (ii) where you rely upon a statutory or other defence or set-off, the particulars thereof.

Where an amount less than the amount of the judgment debt is paid to the clerk of the court, you are required to file with the clerk a statement signed by you in explanation thereof.

Upon your default in complying with the requirements above set out, the plaintiff may apply to the court for judgment against you, the garnishee, for an amount equal to the unpaid portion of any judgment he may recover in this action against the defendant and for his costs.

R.S.O. 1950, c. 106, s. 152.

**153.** Service upon the garnishee of a garnishment summons has the same effect and consequence as service of a <sup>Effect of summons</sup> direction to garnish. R.S.O. 1950, c. 106, s. 153.

**154.**—(1) Where judgment is obtained against the defendant under sections 88, 89 or 90, or is obtained at the trial, <sup>Judgment against garnishee</sup> or where judgment is not then given, on proof of the service on the defendant of a copy of the garnishment summons and particulars, and of the debt due and owing by the defendant, the judge, on proof of the amount owing or accruing due to the defendant from the garnishee, may give judgment against the garnishee in the prescribed form for the amount so owing or accruing from him or sufficient thereof to satisfy the claim of the plaintiff and costs, which sum the garnishee shall pay into court towards the satisfaction of the claim and costs, and, in default, execution may issue therefor, if due, or as it becomes due, or at such later period as the judge orders.

(2) Where the garnishee in a statement signed by him and filed with the clerk of the court sets up a statutory or other defence or set-off, he shall be given notice of a hearing at which he may furnish proof of such defence or set-off before judgment is given against him. <sup>Hearing of garnishee</sup> R.S.O. 1950, c. 106, s. 154.

**155.** Where a person, other than the plaintiff or defendant, claims to be entitled to the debt owing or accruing from the garnishee or any part thereof by assignment or otherwise, the judge, after notice to all persons interested, may inquire into and decide upon the claim, and, where there is more than one claim, decide upon the priority in which the respective claims are entitled to rank on the debt as the justice of the case requires. <sup>Adverse claims</sup> R.S.O. 1950, c. 106, s. 155.



## CONSOLIDATION ORDERS

Application  
for consoli-  
dation order

**156.**—(1) A judgment debtor against whom more than one division court judgment remains unsatisfied in whole or in part may apply to the judge of the court of the division in which he resides for a consolidation order.

Material on  
application

(2) Upon the application, the judgment debtor shall file his own affidavit setting forth,

- (a) the names and addresses of the creditors who have obtained judgment against him in a division court, the date, amount and other particulars of each judgment, and the amount that he owes to each such judgment creditor;
- (b) the amount of his income from all sources, naming them;
- (c) his business or occupation, and the address of his employer;
- (d) a statement of his family or like obligations and of any other relevant facts.

Disposition  
*ex parte* or  
upon notice

(3) Upon the application, the judge may make a consolidation order *ex parte* or may give such directions as to notice as he deems fit.

Computa-  
tion of  
amounts

(4) Before making a consolidation order the judge shall determine the average weekly income of the judgment debtor for the three-month period immediately before the making of the application, making all proper allowances where the occupation is of a seasonal nature, and shall order the following amounts, calculated to the nearest dollar, to be paid into court under the consolidation order, subject always to any variation that, because of extenuating or other special circumstances, the judge deems proper:

1. 15 per cent of the average weekly income, where the average weekly income does not exceed \$30.
2. 20 per cent of the average weekly income, where the average weekly income exceeds \$30 and does not exceed \$40.
3. 25 per cent of the average weekly income, where the average weekly income exceeds \$40 and does not exceed \$50.

4. 30 per cent of the average weekly income, where the average weekly income exceeds \$50.

(5) A consolidation order shall set out,

Particulars  
of order

- (a) a list of the division court judgments outstanding against the judgment debtor, indicating in each case the date, court and amount and the amount still outstanding;
- (b) the amounts to be paid into court by the judgment debtor under the consolidation order; and
- (c) the times of such payments. R.S.O. 1950, c. 106, s. 156.

**157.**—(1) The original consolidation order shall be filed with the clerk of the court in which it was made and a copy thereof, certified by such clerk, may be filed by the judgment debtor in any other division court.

Filing order  
and copies

(2) Upon the filing of the original consolidation order, the clerk shall open a consolidation account in the name of the judgment debtor and shall credit thereto all payments made under the consolidation order. R.S.O. 1950, c. 106, s. 157.

Consolidation  
account

**158.**—(1) Where a judgment creditor objects to the amount directed to be paid or to any other judgment creditor being included in the consolidation order, he may apply to the judge for an appointment to determine the matter.

Objection  
by creditor

(2) Notice of the appointment shall be sent by registered mail to such persons as the judge directs, and, upon the appointment, the judge shall deal with the matter in a summary manner, and his determination is final. R.S.O. 1950, c. 106, s. 158.

Judge's  
determination

**159.**—(1) Where a judgment is obtained against the judgment debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the judgment creditor may deliver to the clerk of the court in charge of the consolidation order a notice of his judgment, and his name shall forthwith be added to the consolidation order and he shall thereafter share in the distribution under the consolidation order.

Debt  
incurred  
before  
order

(2) Where a judgment is obtained against the judgment debtor after the date of the consolidation order for a debt incurred after the date of the consolidation order, the consolidation order *ipso facto* terminates. 1957, c. 29, s. 8.

Judgment  
after order

Further  
order

(3) Where the judgment debtor applies for a further consolidation order, the judge shall examine the nature of the further debt or debts incurred and may make such order. 1955, c. 18, s. 1, *part.*

Stay of  
proceedings

**160.** A judgment debtor in respect of whom a consolidation order has been made may, either before default has occurred or not later than the tenth day after default has occurred, apply to the judge for a stay of proceedings, and, upon notice of the hearing being sent by registered mail to all judgment creditors, or such of them as the judge directs, the judge shall hear the application and may by order grant such stay of proceedings as he deems fit or he may dismiss the application. R.S.O. 1950, c. 106, s. 160.

Effect of  
order

**161.**—(1) Subject to subsection 2, no garnishment summons and no proceedings subsequent to judgment, except an execution against lands, shall be taken or continued against the judgment debtor named therein in a division court in which a consolidation order or a certified copy thereof is filed. R.S.O. 1950, c. 106, s. 161 (1); 1955, c. 18, s. 2 (1).

Default

(2) Where a judgment debtor is in default for a period of twenty days under a consolidation order, the consolidation order is, subject to any order under section 160 that may have been made before such date, *ipso facto* terminated, and any judgment creditor named in the consolidation order may obtain from the clerk of the court in which the consolidation order was made a certificate of termination for the purpose of filing it in any court in which a copy of the consolidation order is filed. R.S.O. 1950, c. 106, s. 161 (2).

Stay for  
3 months

(3) Where a consolidation order has terminated under subsection 2, no further consolidation order shall be made in respect of such judgment debtor for a period of three months from the date of such termination. 1955, c. 18, s. 2 (2).

Addition of  
Supreme  
and county  
court  
judgments to  
consolidation  
orders

**162.** Notwithstanding subsection 1 of section 161, where a judgment is transferred under subsection 3 of section 129 and a consolidation order has been made against the judgment debtor, the clerk of the court shall add the judgment to the consolidation order but only to the extent of \$200. 1960, c. 27, s. 1.

Property  
in moneys

**163.**—(1) All moneys paid into a consolidation account belong to the judgment creditors named in the consolidation order who shall share *pro rata* in the distribution of the moneys.

(2) The clerk shall distribute the moneys paid into the <sup>Distribution</sup> consolidation account on account of the judgments at least once every three months, and at the time of distribution shall send to each creditor a distribution sheet showing the total amount paid and the distribution thereof.

(3) The distribution shall be on a *pro rata* basis according <sup>Basis of</sup> to the amount of each of the judgments filed with the clerk, <sup>distribution</sup> or as nearly so as is practicable to the nearest dollar.

(4) The clerk is entitled to a fee of 10 per cent of the <sup>Fees of</sup> amount paid in of which amount 5 per cent shall be charged <sup>clerk</sup> to the judgment creditors and 5 per cent to the judgment debtor. R.S.O. 1950, c. 106, s. 162 (1-4).

(5) The amount of the postage paid shall be deducted <sup>Postage</sup> from the amounts paid to the judgment creditors. R.S.O. <sup>to be</sup> 1950, c. 106, s. 162 (5), *amended*. <sup>deducted</sup>

#### ABSCONDING DEBTORS

**164.** Where a person indebted in a sum not less than \$4, <sup>Warrant for</sup> either for debt or damages arising upon a contract, and <sup>attachment</sup> recoverable in or upon a judgment of a division court,

- (a) absconds from Ontario, leaving personal property liable to seizure under execution for debt in any county; or
- (b) attempts to remove such personal property out of Ontario or from one county to another therein with intent to defraud; or
- (c) keeps himself concealed to avoid service of process,

the clerk of any division court, upon the application of the creditor and upon his filing an affidavit in the prescribed form made by him, his agent or servant, shall issue a warrant in the prescribed form, directed to the bailiff of the court from which it issued, or to a constable of the county, commanding him to attach, seize, take and safely keep all the personal estate and effects of such person in the county, liable to seizure under execution for debt, or a sufficient part thereof to secure the sum mentioned in the warrant with costs, and to return the warrant forthwith to the court. R.S.O. 1950, c. 106, s. 163.

When judge or justice of the peace may issue attachments, etc.

**165.** The affidavit mentioned in section 164 may be taken before a judge or a justice of the peace, and, upon the filing thereof with him, he may issue a warrant under his hand and seal in the form mentioned in section 164, and he shall forthwith transmit the affidavit to the clerk of the court in whose division it was taken, to be by him filed. R.S.O. 1950, c. 106, s. 164.

Bailiff or constable to seize and make inventory

**166.** Upon receipt of a warrant by the bailiff or constable and upon being paid his lawful fees, including the fees for appraisement, he shall forthwith execute the warrant and make a true inventory of all the estate and effects that he seizes and takes by virtue thereof, and shall, within twenty-four hours after seizure, call to his aid two freeholders, who, being first sworn by him to appraise the estate and effects seized, shall then appraise them, and the bailiff or constable shall forthwith return the inventory attached to the appraisement to the clerk. R.S.O. 1950, c. 106, s. 165.

Proceedings may be continued in same court

**167.** In an action commenced by attachment, the proceedings may be conducted to judgment and execution in the court of the division in which the warrant issued. R.S.O. 1950, c. 106, s. 166.

Proceedings commenced before attachment

**168.** Where proceedings have been commenced before the issue of an attachment, they may be continued to judgment and execution in the court in which the proceedings were commenced. R.S.O. 1950, c. 106, s. 167.

Property attached may be sold under execution

**169.** The property attached upon a warrant of attachment is liable to seizure and sale under the execution to be issued upon the judgment, and, if the property was perishable and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. R.S.O. 1950, c. 106, s. 168.

Plaintiff not to divide cause of action

**170.** A plaintiff shall not divide a cause of action into two or more actions for the purpose of bringing it within the provisions of sections 164 to 169, but a plaintiff having a cause of action for which, but for the amount of the claim, an attachment might be issued, may abandon the excess, and the judgment is a full discharge of all demands in respect of the cause of action, and the entry of judgment shall be made accordingly. R.S.O. 1950, c. 106, s. 169.

If several attachments issued  
R.S.O. 1960, c. 1

**171.** Subject to *The Absconding Debtors Act*, where there are several attachments against a party, the proceeds of the property attached shall not be paid over to the attaching creditors according to priority, but shall be rateably distributed among such of them as obtain judgment against the

debtor in proportion to the amounts actually due upon their judgments, and no distribution shall take place until, in the opinion of the judge, reasonable time has been allowed to the creditors to proceed to judgment. R.S.O. 1950, c. 106, s. 170.

**172.** Where the proceeds of the property are insufficient to satisfy the claims of all the attaching creditors, a creditor shall not be allowed to share, unless he sued out his attachment and gave notice thereof to the clerk of the court out of which the first attachment issued or into which it was returnable within one month next after the issue of the first attachment. R.S.O. 1950, c. 106, s. 171.

If goods insufficient to satisfy claims of all attaching creditors

**173.—**(1) Where property is attached under sections 164 to 172 by a constable, it shall be handed over forthwith to the bailiff of the court out of which the warrant of attachment issued or into which it was made returnable.

Goods seized by constable to be delivered to bailiff

(2) Property attached by a bailiff under sections 164 to 172 and the property delivered to him under subsection 1 shall remain in the custody of the bailiff, and he shall keep it until it is disposed of according to law. R.S.O. 1950, c. 106, s. 172.

Custody of goods seized under attachment

**174.—**(1) Where a person against whom an attachment has issued, or any person on his behalf, executes and files in the court to which the attachment, or first attachment, if there are more than one, has been returned, or is returnable, a bond with good and sufficient sureties, to be approved by the judge or clerk, binding the obligors, jointly and severally, to the clerk, in double the appraised value of the property attached, with a condition that the debtor (naming him) will, whenever thereunto required by order of the judge, pay into court a sum sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property or the value of the property attached, or will produce the property to satisfy the judgments, the clerk may supersede the attachment, and the property attached shall be restored.

On what terms goods attached may be restored

(2) Subject to section 171, if, within one month after the property has been attached, the person against whom the attachment has issued, or some person on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been recovered, and the property attached, or so much thereof as is necessary to satisfy the judgment and costs, may be sold for the satisfaction thereof, or, if the property has been previously sold as perishable, so much of the proceeds thereof as are necessary may be applied to satisfy the judgment and costs. R.S.O. 1950, c. 106, s. 173.

Sale of goods if the debtor does not appear and give security

Proceedings  
against  
debtors  
where pro-  
cess not  
previously  
served

**175.**—(1) Where a summons has not been served before the issue of a warrant of attachment, it may be served personally or by leaving a copy at the last place of residence or business of the defendant with any grown person residing there, or by leaving the copy at such place if no grown person is there found.

Costs

(2) If it appears to the judge at the trial that the creditor who sued out an attachment had not reasonable or probable cause for taking the proceedings, the judge shall order that no costs be allowed to the creditor. R.S.O. 1950, c. 106, s. 174.

Perishable  
goods, how  
disposed of  
R.S.O. 1960,  
c. 1

**176.** Subject to *The Absconding Debtors Act*, where perishable property has been attached, the bailiff who has the custody thereof, it having been first appraised, may, at the request of the attaching creditor, expose and sell it at public auction to the highest bidder, giving at least eight days notice, at the office of the clerk and at two other public places in his division, of the time and place of sale, if the property attached will admit of being so long kept, otherwise he may sell it at his discretion. R.S.O. 1950, c. 106, s. 175.

Creditors  
may be  
required to  
indemnify  
the  
defendant

**177.**—(1) It is not compulsory upon the bailiff or constable to attach, or upon the bailiff to sell, perishable property until the attaching creditor has given a bond to the defendant, with good and sufficient sureties to the satisfaction of the bailiff, in double the amount of the appraised value of the property, conditioned that the attaching creditor will repay the value thereof, together with all costs and damages incurred in consequence of the attachment and sale, in case judgment is not obtained by him, and the bond shall be filed with the clerk.

Application  
of proceeds  
of sale

(2) The money made shall be paid over by the bailiff to the clerk, to be dealt with in the manner hereinbefore provided. R.S.O. 1950, c. 106, s. 176.

Enforcing  
security  
given  
under Act

**178.**—(1) A bond given in the course of any proceeding under this Act may be sued on in any division court of the county in which it was executed, notwithstanding that the penalty in the bond exceeds the sum of \$100.

Delivery of  
bond to  
party  
entitled

(2) The bond shall be delivered to any person entitled to it, upon the order of the judge, to be enforced or cancelled as the case requires. R.S.O. 1950, c. 106, s. 177.

## CLAIMS OF LANDLORDS, ETC., WITH RESPECT TO GOODS SEIZED

**179.** In this section and in sections 180 and 181,

Interpre-  
tation

- (a) "agent" means a person usually employed by the landlord in the letting of land or in the collection of the rents thereof, or specially authorized by writing under the hand of the landlord to act in any particular matter;
- (b) "landlord" includes the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary or tenancy in common, any one of the persons entitled to the reversion. R.S.O. 1950, c. 106, s. 178.

**180.**—(1) Where a claim is made to or in respect of pro-<sup>Adjustment of claims of landlords, etc., to goods seized in execution</sup>perty or security taken in execution or attached under the process of a division court, or the proceeds or value thereof, by a landlord for rent, or by a person other than the party against whom the process issued, then, subject to *The Absconding Debtors Act*, upon application of the bailiff or officer charged with the execution of the process, either before or after an action has been brought against him, the clerk shall issue a summons calling before the court out of which the process issued, or the court for the division in which the seizure or attachment under the process was made, the party who issued the process and the person making the claim, and thereupon any action that has been brought in the Supreme Court or in any other court in respect of the claim shall be stayed. <sup>R.S.O. 1960, c. 1</sup>

(2) The court in which the action has been brought, or a <sup>Costs</sup> judge thereof, on proof of the issue of the summons, and that the property or security was taken in execution or upon attachment, may order the party bringing the action to pay the costs of all proceedings had in the action after the issue of the summons out of the division court.

(3) The judge shall adjudicate upon the claim and make <sup>Judge to adjudicate on claims</sup>such order between the parties in respect thereof and of the costs of the proceedings as to him seems just, and shall also adjudicate between the parties, or either of them, and the bailiff or officer in respect of any claim for damages arising out of the execution of the process by the bailiff or officer, although the amount of the damages claimed or awarded is beyond the jurisdiction of a division court, and may make such order in respect thereof and of the costs of any proceedings as to him seems just.



Enforcing  
order

(4) The order may be enforced in like manner as an order made in an action.

New trial

(5) The judge, upon the application of the execution or attaching creditor or the claimant, or the bailiff or officer, may grant a new trial as in other cases, and may in the meantime stay proceedings

Where more  
than one  
execution or  
attachment  
has issued

(6) Where the bailiff or officer has executions or attachments for different persons against the same property, it is not necessary to make a separate application on each execution or attachment, but he may use the names of the execution or attaching creditors collectively in the application, and the summons may issue in the names of the creditors as plaintiffs.

Rights of  
parties as to  
defence and  
as to costs

(7) The parties and the bailiff have the same rights of defence and counterclaim, including in all cases the right and liability to costs, as would exist had an action, within the jurisdiction of the court, been brought to recover the damages. R.S.O. 1950, c. 106, s. 179.

Provisions in  
relation to  
rents due  
to  
landlords

**181.**—(1) The landlord of a tenement in or upon which property is taken under an execution, may, by notice in writing, signed by himself or his agent, stating the terms of the holding and the rent payable, delivered to the bailiff or officer making the levy, claim any rent due and in arrear at the time of the taking in execution not exceeding the rent of four weeks where the tenement has been let by the week, and not exceeding the rent for two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent for one year.

Notice of  
claim for  
rent

(2) Notice of the claim may be given at any time before the return of the process, notwithstanding that the property may in the meantime have been removed from the premises upon which it was seized, and, where the property of a tenant is sold within ten days after seizure, the money realized shall remain in court until the expiration of the ten days to answer the claim of the landlord, and, where the money has been paid into court, the notice may be directed to the clerk with like effect as if given to the bailiff or officer before the sale of the property seized.

How the  
bailiff is to  
proceed

(3) The bailiff or officer making the levy shall also distrain for the amount of the rent claimed and the costs of the distress, but shall not sell the property, or any part thereof, until after the expiration of eight days after the distress.

(4) For every distress for rent in arrear the bailiff or officer is entitled to have as costs of the distress, instead of the fees allowed by this Act, the fees allowed by *The Costs of Distress Act*. Fees of bailiff in such cases R.S.O. 1960, c. 74

(5) If any replevin is made of the property distrained, so much of the property taken under the execution shall be sold as will satisfy the money and costs for which the execution issued and the costs of the sale, and the surplus of the sale, if any, and the property so distrained shall be returned as in other cases of distress for rent and replevin. Sale where replevin made

(6) An execution creditor shall not have his debt satisfied out of the proceeds of the execution and distress, or of the execution only, where the tenant replevies, until the landlord who conforms to this Act has been paid the rent in arrear for the periods hereinbefore mentioned. R.S.O. 1950, c. 106, s. 180. Priority of landlord's claim

#### PARTNERSHIPS AND SPECIAL NAMES

**182.**—(1) In the case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable, who reside in different divisions, or of whom one or more cannot be found, one or more of such persons may be sued or served with process, and judgment may be obtained and execution issued against him or them, notwithstanding that others jointly liable have been sued or served, without prejudice to the right of the person against whom execution issues to demand contribution from any other person jointly liable with him. One or more of persons jointly liable may be sued

(2) Where a judgment has been obtained against one or more of several partners under subsection 1 and the judge certifies that the demand proved was a partnership transaction, the bailiff may, under the execution, seize and sell the property of the firm as well as that of any defendant who has been served. Bailiff may seize property of firm on certificate of judge

(3) Two or more persons claiming or being liable as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time the cause of action accrued. Partners sued in name of firm

(4) Where partners are sued in the name of the firm, the summons may be served on one or more of them or at the principal place in Ontario of the business of the partnership or upon any person having control of the partnership business there, and, subject to subsections 6 and 7, such Service on partners

service shall be deemed good service upon the firm, and the affidavit of the service of the summons shall state the name of the person served.

Order to  
furnish  
names and  
addresses

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the names and addresses of the persons who are co-partners in any firm that is a party to the action by the firm name, to be furnished in such manner as the judge directs.

When  
partnership  
dissolved

(6) In the case of a partnership that to the knowledge of the plaintiff has been dissolved before action, the summons shall be served upon every person in Ontario sought to be made liable.

Notice of  
capacity in  
which person  
served

(7) Where a summons is issued against a firm and is served as directed by this section, every person upon whom it is served shall be informed by notice given at the time of service whether he is served as a partner or as a person having control or management of the partnership business or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Attachment  
of debts  
due by firm

(8) Debts owing from a firm carrying on business in Ontario may be attached although one or more members of the firm may be resident out of Ontario, if some person having the control or management of the partnership business or a member of the firm in Ontario is served with the attaching order. R.S.O. 1950, c. 106, s. 181.

Execution  
against  
partners

**183.**—(1) Where a judgment is against a firm, execution may, subject to section 184, issue against the property of,

- (a) the partnership;
- (b) any person who has admitted in the notice of dispute or defence filed that he is a partner, or who has been adjudged a partner;
- (c) any person who has been individually served as a partner with a copy of the summons and who has not filed a notice of dispute or defence.

Leave to  
issue  
execution  
against  
other  
members

(2) If the party who has obtained a judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave to do so, and the judge may give such leave if the liability is not disputed, or, if disputed, after the liability has been determined in such manner as he directs. R.S.O. 1950, c. 106, s. 182.

**184.** Except as against the property of the partnership, a judgment against a firm does not render liable, release, or otherwise affect any member thereof who was out of Ontario when the summons was issued and who has not entered a defence to the action, unless he has been made a party under section 85 or has been served in Ontario after the summons was issued. R.S.O. 1950, c. 106, s. 183.

**185.—(1)** Subject to *The Partnerships Registration Act*, a person, whether or not a British subject and whether residing in or out of Ontario, carrying on business in Ontario under a name or style other than his own name may sue and be sued in such name or style.

Persons carrying on business in Ontario under another name  
R.S.O. 1960, c. 289

(2) Leave is not necessary to issue the summons.

Leave not required

(3) The summons may be served upon the person so carrying on business if he is in Ontario, or at his place of business in Ontario, or, if there are several such places, at the place in or nearest to the county in which the cause of action arose, upon any person having the control or management of the business there, and such service is equivalent to personal service on the person so sued.

Service of summons

(4) The person upon whom the summons is served shall be informed by notice given at the time of service whether he is served as the person carrying on the business or as the person having the control or management of it or in both characters, and in default of such notice he shall be deemed to be served as the person carrying on the business.

Notice of character in which person served

(5) A party may, at any time before or after judgment, apply for an order directing a statement of the name and address of the person who is, and of the person who at the time of the accruing of the cause of action was, carrying on business under such name or style, to be furnished in such manner as the judge directs.

Procuring name and address of person carrying on business

(6) The person so sued shall enter a dispute in his own name, but all subsequent proceedings shall continue in such name or style.

Person served to appear in his own name

(7) A person served as the person carrying on the business may enter a defence under protest, denying that he is the person so carrying on the business, but such defence does not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of defence in the ordinary form by the person so sued.

Defence under protest

When person  
served is not  
carrying on  
the business

(8) Where a summons is served under subsection 3 on a person having the control or management of but not carrying on the business, a dispute by him is not necessary.

Enforcement  
of judgment,  
what proper-  
ty exigible

(9) A judgment or order in the action may be enforced by execution against,

(a) the property of the person so sued, used or employed in or in connection with the business; and

(b) the property in Ontario of the person so sued, if he has entered a defence in the action or has been adjudged to be the person carrying on the business or has been personally served with the summons in Ontario and has failed to enter a defence.

Issuing  
execution  
against  
person  
alleged  
to be carry-  
ing on the  
business

(10) If the person so sued has not entered a dispute or has not been personally served or has not been adjudged to be the person carrying on the business, the plaintiff may apply for leave to issue execution against the person in Ontario whom the plaintiff alleges to be the person carrying on the business, and the judge may give such leave if the liability be not disputed, or, if disputed, after the liability has been determined, in such manner as the judge directs. R.S.O. 1950, c. 106, s. 184.

#### JURIES

When a  
jury may  
be required

**186.**—(1) Either party may require a jury in any class of action where the amount sought to be recovered exceeds \$50.

Notice to  
clerk

(2) Where the plaintiff requires a jury, he shall give notice thereof to the clerk one week before the sittings of the court at which the action is to be tried, and deposit with him the proper fees for the expenses attending the summoning of the jury and, where a claimant or a defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the clerk the like notice and deposit with him the proper fees, and thereupon, in either case, a jury shall be summoned.

When action  
transferred

(3) In an action transferred from one court to another, either party may require a jury to be summoned by giving to the clerk of the court to which the action has been transferred, three clear days before the sittings of the court at which the case is to be tried, a notice requiring a jury to be summoned, and depositing with him the proper fees for the expenses attending the summoning of the jury. R.S.O. 1950, c. 106, s. 185.

**187.**—(1) Unless exempted by *The Jurors Act*, every person whose name appears on the last revised voters' list of a municipality partly or wholly within the division, and who resides therein, and whose name is marked "J", is liable to serve as a juror for the court of such division. Who liable to be jurors R.S.O. 1960, c. 199

(2) The jurors shall be residents of the division and shall be selected from the last revised voters' list of the municipalities partly or wholly within the division. From whom selected

(3) Where there has been no previous selection of jurors, the manner of selecting them shall be as follows: Manner of selection

1. The clerk shall begin with the name of the first qualified person on the list of the municipality and proceed with the selection by taking the names in rotation until the requisite number has been selected.
2. Where there are several municipalities, the clerk shall begin with the name of the first qualified person on the list of the municipality in which the court is held, taking one name from the list, and then shall take one name from each of the lists of the other municipalities in rotation, beginning with the list that contains the greatest number of names of qualified persons, and shall repeat the same process until the requisite number has been selected.

(4) Where there has been a previous selection of jurors, the clerk shall proceed as provided by subsection 3, except that he shall begin where he left off at the next preceding selection, or, in the case of a new list, as nearly as may be at the place that corresponds with the place where he left off at the previous selection. Where there has been previous selection

(5) If it appears to the judge that the cost of summoning a jury is excessive by reason of the residences of the persons liable to be selected being in a distant part of the division, he may direct the clerk to begin with the name of the first qualified person on the list of any municipality partly or wholly within the division, and proceed as in subsection 3. Where cost of summoning excessive

(6) Where a municipality, partly or wholly within the division, is a party, and the jury would, if selected in ordinary course, be composed of ratepayers of such municipality, the judge, upon the application of a party, may direct the clerk not to select any juror from the list of such municipality, or may before or at the trial direct that the issues shall be tried and damages be assessed without a jury. Where municipality is a party

Application  
of section

(7) This section does not apply in a provisional judicial district. R.S.O. 1950, c. 106, s. 186.

Summoning  
jurors

**188.** Where a jury is required to be summoned, the clerk shall cause not less than twelve of the persons liable to serve as jurors to be summoned, and the summons shall be served at least two days before the court, either personally or by leaving it with a grown-up person at the residence of the juror, and the summons shall be returned to the clerk with an affidavit of service of the bailiff serving it. R.S.O. 1950, c. 106, s. 187.

Challenge

**189.** Each party is entitled to challenge two jurors peremptorily and any juror for cause. R.S.O. 1950, c. 106, s. 188.

Penalty on  
jurors dis-  
obeying  
summons

**190.** A juror who, after being duly summoned, wilfully neglects or refuses to attend is liable to a fine, in the discretion of the judge, of not more than \$4, which shall be levied and collected, with costs, by the same process as a judgment recovered in the court. R.S.O. 1950, c. 106, s. 189.

Judge's list  
and jury  
list

**191.**—(1) Actions to be heard by the judge alone shall be set down in a list separate from the list of those to be tried by a jury, to be called "the judge's list" and "the jury list", and actions shall be set down in the order in which they were entered with the clerk.

Jury list to  
be first

(2) The jury list shall be disposed of first, unless the judge otherwise directs. R.S.O. 1950, c. 106, s. 190.

Five jurors  
to be em-  
panelled,  
etc.

**192.** Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and the verdict of every jury shall be unanimous. R.S.O. 1950, c. 106, s. 191.

Judge may  
call *tales*

**193.**—(1) If the panel is exhausted, the judge may direct the clerk to summon from the body of the court a sufficient number of disinterested persons to make up a full jury, and any person so summoned may, saving all lawful exceptions and rights of challenge, act as a juror.

Judge may  
order jury  
to be em-  
panelled

(2) Where the judge thinks it proper to have the action or any controverted fact tried by a jury, the clerk shall instantly return a jury of five disinterested persons present to try the action or controverted fact, and the judge may give judgment on the verdict of the jury. R.S.O. 1950, c. 106, s. 192.

**194.** If the judge is satisfied that a jury after having been out a reasonable time cannot agree upon their verdict, he may discharge them and adjourn the trial and order the clerk to summon a new jury for the next sittings, unless the parties consent that the judge may give judgment on the evidence already taken, in which case he may give judgment accordingly. R.S.O. 1950, c. 106, s. 193.

Judge may discharge jury not agreeing, etc.

**195.—(1)** In all cases of trial by jury the judge has power to determine, after hearing the whole evidence or the evidence adduced on behalf of the plaintiff alone, whether there is any evidence in support of the plaintiff's case that ought to be submitted to the jury, and, if in his opinion there is no such evidence, he may then, or after verdict, if he has reserved his decision, direct a nonsuit or dismiss the action.

Power to direct nonsuit or dismiss action

(2) The judge may direct the jury to answer any questions of fact stated to them by him and the jury shall answer them, and, subject to subsection 1, upon their answers the judge shall enter such judgment as in his opinion is proper.

Submitting questions to jury

(3) The judge shall determine the law and direct the jury thereon.

Duty of judge

(4) When in the opinion of the judge the action is one that ought to be tried without a jury, the judge has power to direct that the action be taken out of their hands.

Idem

(5) Where in the opinion of the judge the jury notice is given for the purpose of delay, he may strike it out on a summary application. R.S.O. 1950, c. 106, s. 194.

Idem

**196.—(1)** The clerk shall pay every juror actually attending a sittings of a division court the sum of \$6 per day for every day on which he was necessarily absent from his place of residence for the purpose of attending the court, and the sum of 10 cents for every mile he necessarily travelled from his place of residence to the court. 1953, c. 30, s. 1.

Jurors' fees and mileage

(2) Payments made under this section shall be certified by the judge, and the treasurer of the county, or, in the case of a provisional judicial district, the Treasurer of Ontario, shall upon presentation of the certificate pay to the clerk the amount which the certificate shows to have been paid to the jurors. R.S.O. 1950, c. 106, s. 195 (2).

Certifying payment of jurors and refund to clerk



Fees for  
jury fund

**197.**—(1) There shall be paid to the clerk on every action originally entered in his court, in addition to all costs or jury fees payable,

- (a) where the claim exceeds \$20 but does not exceed \$60—3 cents;
- (b) where the claim exceeds \$60 but does not exceed \$100—6 cents;
- (c) where the claim exceeds \$100—25 cents,

and the same shall be taxed and allowed as costs in the cause.

Return

(2) On or before the 15th day of January in every year, the clerk shall return to the treasurer of the county a statement under oath showing the number of actions originally entered in his court during the previous year, in which the claim exceeded \$20 but did not exceed \$60, the number in which the claim exceeded \$60 but did not exceed \$100, and the number in which the claim exceeded \$100.

Fees to be  
paid to  
county  
treasurer

(3) The clerk shall, with the statement, pay over to the treasurer the fees payable under this section, and the treasurer shall keep an account of all money so received by him under the head of "Division Court Jury Fund".

Other cities  
and  
separated  
towns

(4) In the case of cities and separated towns, the amounts paid in by the clerks and the amount paid by the county treasurer to the clerks for jury fees shall be taken into account in settling the proportion of the charges to be paid by the city or separated town towards the cost of administration of justice.

Provisional  
judicial  
districts

(5) This section does not apply to a provisional judicial district. R.S.O. 1950, c. 106, s. 196.

Special  
provisions re  
Metropolitan  
Toronto

**198.** Notwithstanding sections 196 and 197, with respect to the division courts having jurisdiction in The Municipality of Metropolitan Toronto,

- (a) the treasurer of the metropolitan municipality shall pay to the clerk of each such court the amount certified to have been paid to jurors;
- (b) the clerk of each such court shall make the return mentioned in subsection 2 of section 197 to the treasurer of the metropolitan municipality and pay over to him the fees payable under section 197; and

- (c) the treasurer of the metropolitan municipality shall keep an account of all money so received by him under the head of "Division Court Jury Fund",

and subsection 4 of section 197 does not apply with respect to the metropolitan municipality and the County of York. 1954, c. 24, s. 3.

#### GENERAL

**199.**—(1) The Inspector shall,

Duties of  
Inspector

- (a) make a personal inspection of every division court and of the books and papers thereof;
- (b) see that the proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a correct manner, at a suitable time and in proper form and order, and that the papers and documents are properly classified and preserved;
- (c) see that the duties of the officers of the courts are efficiently performed and that the office is at all times duly attended by the clerk;
- (d) see that lawful fees only are taxed or allowed as costs;
- (e) see that proper security is furnished and maintained on behalf of every clerk and bailiff; and
- (f) report upon all such matters to the Lieutenant Governor. R.S.O. 1950, c. 106, s. 197 (1); 1953, c. 30, s. 2.

(2) The Inspector, with the approval of the Lieutenant Governor in Council, may delegate to any clerk or officer in his office any power or duty conferred or imposed upon the Inspector under this Act, and for such purpose every such person shall have and may exercise all the powers of the Inspector. R.S.O. 1950, c. 106, s. 197 (2).

Delegation  
of authority  
by Inspector

**200.** Where books, documents or papers have been pre-served in a division court for so long that it appears they need not be preserved any longer, the judge may make an order authorizing the Inspector to cause their destruction. 1953, c. 30, s. 3.

Destruction  
of  
documents

Power of  
Inspector  
in making  
inquiry into  
conduct of  
officers

**201.** Where the Inspector considers it expedient to institute an inquiry into the conduct of a clerk or bailiff, he may require him and any other person to give evidence on oath, and for that purpose he has the same power as any court has in civil cases to summon such officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents, and to give evidence. R.S.O. 1950, c. 106, s. 198.

Contempt  
of court

**202.** Every person who wilfully insults the judge or any officer of a division court during his sitting or attendance in court, or interrupts the proceedings of the court, or creates a disturbance in the court-room or within hearing of the court, is guilty of an offence and any bailiff or officer of the court may, by direction of the judge, take the offender into custody and bring him before the judge, and the judge may impose upon him a fine of not more than \$20, and in default of immediate payment may, by warrant under his hand and seal, commit the offender to the jail of the county for a period of not more than one month, unless the fine and costs with the expense attending the commitment are sooner paid. R.S.O. 1950, c. 106, s. 199.

Resisting  
officers

**203.**—(1) Every person who interferes with a bailiff or officer or his deputy or assistant while in the execution of his duty, or makes or attempts to rescue any property seized or attached under process of the court, is guilty of an offence and liable to a penalty of not more than \$20, to be recovered by order of the court or on summary conviction before a magistrate, and is also liable to be imprisoned, by order of the court or magistrate, for any term of not more than three months. R.S.O. 1950, c. 106, s. 200 (1), *amended*.

Arrest of  
offenders

(2) The bailiff or officer, or any peace officer, may take the offender into custody, with or without warrant, and bring him before the court or magistrate. R.S.O. 1950, c. 106, s. 200 (2); 1954, c. 24, s. 4, *amended*.

Enforcing  
payment  
of fines

**204.** A fine imposed by a judge under this Act may be enforced by his order in like manner as a judgment. R.S.O. 1950, c. 106, s. 201.

Distress not  
to be deemed  
unlawful,  
etc., by  
reason of  
defect in  
proceedings

**205.** A levy or distress by virtue of this Act shall not be deemed unlawful, or the person making it be deemed a trespasser, on account of any defect or want of form in any proceeding relating thereto, nor shall the person levying or distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him,

but the person aggrieved by the irregularity may recover full satisfaction for the special damage sustained by him. R.S.O. 1950, c. 106, s. 202.

**206.**—(1) In cases not expressly provided for by this Act or by the rules, the judge may, in his discretion, adopt and apply the general principles of practice in the Supreme Court to actions and proceedings in the division courts. Where practice of the Supreme Court to apply

(2) Nothing in this Act authorizes the taxation or allowance of costs to any officer of the court, other than those provided for by this Act, or in the tariff of fees. R.S.O. 1950, c. 106, s. 203. Limitations as to costs

**207.**—(1) No proceedings shall be quashed or vacated for any matter of form. R.S.O. 1950, c. 106, s. 204. Defects in form

(2) Failure to observe any of the provisions of this Act with respect to the qualification, selection, summoning and empanelling of jurors is not a ground of impeaching the verdict or judgment in an action. 1952, c. 23, s. 2. Failure to observe jury provisions

**208.** Unless otherwise provided, every notice required by this Act shall be in writing. R.S.O. 1950, c. 106, s. 205. Notices to be in writing

**209.**—(1) Affidavits may be sworn before a clerk or deputy clerk, or before a justice of the peace, notary public or commissioner for taking affidavits. Before whom affidavits may be sworn

(2) An affidavit, sworn before the agent of the party on whose behalf it was made, or before the clerk or partner of such agent, shall not be used. R.S.O. 1950, c. 106, s. 206. Affidavits sworn before agents not to be used

**210.** Where a change in the date of a hearing or other proceeding is necessary because of failure to effect service or for any other reason, the clerk may change the date or dates appearing in a summons, judgment summons, subpoena or other notice or process. R.S.O. 1950, c. 106, s. 207. Changing date in process

**211.**—(1) The Lieutenant Governor in Council may make rules and regulations, Rules and regulations

(a) prescribing the division courts that shall be maintained, the territorial limits of the divisions and the place within each division where the court office shall be located;

(b) prescribing fees payable to the Crown and to clerks, bailiffs, appraisers, witnesses and for any other services performed under this Act;

- (c) regulating the sittings of the courts and providing for fixing the times and places of such sittings;
- (d) prescribing the duties of clerks and bailiffs and requiring clerks to furnish to judges information regarding sittings of the court;
- (e) prescribing the returns to be made and the information to be furnished by clerks and bailiffs;
- (f) prescribing forms and providing for their use;
- (g) providing for the service of summonses and other process issued out of division courts by prepaid mail or otherwise and prescribing the manner of proving service and such other matters as may be necessary or incidental thereto;
- (h) providing for the continuation of courts where a union of counties is dissolved or a county is separated from a union of counties and for the continuation or transfer of actions and judgments therein;
- (i) prescribing and governing the security to be furnished by clerks and bailiffs for the due performance of their duties and, in connection therewith, providing for the Inspector to enter into agreements with any company authorized to carry on the business of fidelity insurance in Ontario;
- (j) regulating any matter relating to the practice and procedure of the courts, or to the duties of the officers thereof, or to the costs of proceedings therein;
- (k) respecting every matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect the provisions of this Act and of all other Acts respecting division courts.

**Territorial  
limits**

(2) In prescribing the territorial limits of a division, the Lieutenant Governor in Council may, where in his opinion the circumstances of the case so warrant,

- (a) include any area within the territorial limits of more than one division; and
- (b) include within the territorial limits of a division court an area in an adjoining county. R.S.O. 1950, c. 106, s. 208.

## PART II

## APPLICABLE ONLY TO DISTRICTS

**212.** Unless exempt under *The Jurors Act*, all male persons <sup>Who liable to serve as jurors</sup> between twenty-one and sixty years of age who reside in the division and who are subjects of Her Majesty by birth or <sup>R.S.O. 1960, c. 199</sup> naturalization may be summoned to serve as jurors at a division court. R.S.O. 1950, c. 106, s. 209.

**213.** The clerk and a justice of the peace resident in the <sup>Who to select jurors</sup> division, or in case there is no justice of the peace so resident, then a justice of the peace residing in an adjoining division, shall select the persons to serve as jurors for the trial of actions required to be tried by or before a jury. R.S.O. 1950, c. 106, s. 210.

**214.**—(1) If the parties agree by writing signed by them <sup>Parties may agree that the judge shall try any matter not over \$800</sup> to refer causes of action, claims and demands to a judge and that he may try and determine them, the judge has power and jurisdiction so to do, if the subject matter in dispute does not exceed \$800 in amount and is otherwise within the jurisdiction of a division court.

(2) The agreement shall be in duplicate, and one of the <sup>Submission to be made in duplicate</sup> duplicates shall be filed with the judge and the other with the clerk of the court in which the action is to be tried, and the court shall thereupon have jurisdiction in respect of the matter referred.

(3) Upon the agreement being filed, the plaintiff may enter <sup>Agreement may be filed and proceedings had to judgment</sup> his claim in such division and sue out a summons thereupon as in ordinary cases, and the proceedings in the action may be conducted to judgment and execution, irrespective of the amount recovered if it does not exceed \$800, in the same manner as other actions in such court. R.S.O. 1950, c. 106, s. 211.

**215.**—(1) An appeal lies to the Court of Appeal from <sup>Appeal</sup> a judgment under section 214.

(2) The provisions of Part I as to appeals apply to an <sup>Application of Part I</sup> appeal under this section. R.S.O. 1950, c. 106, s. 212.

**216.** Upon an application for a new trial in an action <sup>Service on application for new trial</sup> wherein either party may appeal, personal service may be effected, or all papers requiring service may be delivered to the clerk of the court where the action was tried, or left at his office for the person entitled thereto, and the clerk shall forthwith send by registered mail all such papers to the person entitled to them or to his agent. R.S.O. 1950, c. 106, s. 213.

